

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

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HOUSE BILL 951  
PROPOSED COMMITTEE SUBSTITUTE H951-CSRIf-28 [v.5]  
07/12/2021 04:41:51 PM

Short Title: Modernize Energy Generation.

(Public)

Sponsors:

Referred to:

May 12, 2021

1 A BILL TO BE ENTITLED  
2 AN ACT TO MODERNIZE NORTH CAROLINA'S GENERATION AND GRID  
3 RESOURCES AND RATEMAKING AND INVEST IN CRITICAL ENERGY  
4 INFRASTRUCTURE FOR THE BENEFIT OF CUSTOMERS.  
5

6 The General Assembly of North Carolina enacts:  
7

8 **PART I. CERTAIN REQUIREMENTS FOR GRID MODERNIZATION AND**  
9 **INVESTMENT IN CRITICAL ENERGY INFRASTRUCTURE**

10 **SECTION 1.(a)** Findings. – The General Assembly of North Carolina finds:

- 11 (1) In order to ensure predictable and low customer electricity costs, promote  
12 economic development, protect the continued long-term reliability of electric  
13 service, and protect the environment, it is in the public interest of the State to  
14 seek to continue the transition away from coal-fired electricity generation in  
15 an orderly and disciplined manner.  
16 (2) Over-reliance on coal-fired electricity generation carries financial and  
17 operational risks in light of the future potential for limited coal supply options  
18 due to coal market consolidation, future potential coal market constraints, and  
19 coal price unpredictability. These risks are increased when combined with the  
20 effects of likely future stringent federal environmental regulations, including  
21 future potential tax or other costs, direct or indirect, imposed on coal-fired  
22 electricity generation.  
23 (3) In transitioning away from coal-fired electricity generation given uncertainty  
24 of long term fuel supply and environmental regulation, it is in the public  
25 interest and the policy of the State that maintaining predictable and affordable  
26 customer electricity costs and maintaining continued long-term reliability of  
27 the electric grid are the most significant factors in determining replacement  
28 generating resources.  
29 (4) It is in the public interest for the electric public utilities to accelerate retirement  
30 of certain coal-fired electric generating facilities in an orderly and disciplined  
31 manner that (i) ensures continued electric system reliability for all customers,  
32 (ii) mitigates the financial and operational risks associated with potential rapid  
33 coal-fired electric generating facility retirement over a short period of time in  
34 the future, (iii) seeks to maximize the overall value and lower the overall cost  
35 of such future transition, (iv) seeks to reduce the risk of future rate shock  
36 arising from the need for a more compressed transition, (v) delivers to electric



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1 utility customers financial and operational benefits from diverse and new  
2 electric generation technologies, and (vi) will result in a reduction by 2030 of  
3 electric power sector CO2 emissions of at least 61% over 2005 levels.

4 (5) The plan set forth herein is generally consistent with the electric public  
5 utilities' current integrated resource plan and this Act will allow the electric  
6 public utilities to implement their integrated resource plans in a more efficient  
7 manner.

8 (6) The plan set forth herein will provide an "all of the above" approach to  
9 replacing a limited number coal-fired power plants with a combination of  
10 natural gas, nuclear, solar and storage generating technologies.

11 (7) It is in the public interest to decrease the number of rate cases and reduce the  
12 regulatory lag that currently delays and hinders certain capital investments  
13 which would bring or maintain benefit to customers served by the electric  
14 public utilities.

15 (8) To facilitate the investments necessary to transition from coal-fired electricity  
16 generation in a manner that ensures predictable and affordable customer  
17 electricity costs, the General Assembly declares that it is in the public interest  
18 for the North Carolina Utilities Commission to authorize the use of  
19 performance-based regulation for electric utilities in order to achieve and  
20 encourage all of the following:

21 a. Alignment of electric public utilities' incentives with customer and  
22 societal interests through regulatory mechanisms that reward  
23 improved operations and increased program effectiveness,

24 b. Electric public utilities' innovation in service delivery to customers.

25 c. Electric public utilities' investments to make the grid smarter, more  
26 resilient to adverse weather and to cyber and physical security threats,  
27 and capable of accommodating more renewable and distributed energy  
28 resources onto the system.

29 d. More efficient use of energy by customers by decoupling electric  
30 public utility revenues from customer consumption.

31 e. Multi-year rate planning to maintain predictable and affordable rates  
32 and reduce regulatory lag on necessary investments.

33 **SECTION 1.(b)** Definitions. – For purposes of Part I of this act, the following definitions  
34 shall apply:

35 (1) "Coal retirement and replacement plan" means a plan, as described further in  
36 subsection (d) of this section, for retiring a subcritical coal-fired electric  
37 generating facility located in North Carolina by December 31, 2030, and the  
38 replacement of such facility with a new source of energy and capacity.

39 (2) "Designated replacement resources" means those resources that are prescribed  
40 in subsection (c) of this section and those replacement resources that are  
41 approved by the Commission pursuant to subsection (d) of this section to  
42 replace the capacity and energy lost by the retirement of the remaining  
43 subcritical coal-fired generating facility.

44 (3) "Energy storage system" or "ESS" means a system, equipment, facility, or  
45 technology relating to the electric grid that: (i) is capable of absorbing or  
46 receiving electrical energy, storing such energy for a period of time, and  
47 dispatching electrical energy after storage; and (ii) uses a mechanical,  
48 electrical, chemical, electrochemical, or thermal process to store such energy.

49 (4) "Subcritical coal-fired generating facilities" means the remaining units of the  
50 Allen Plant located in Gaston County, Marshall Units 1 and 2 located in

1 Catawba County, the Roxboro Plant located in Person County, Cliffside Unit  
2 5 located in Cleveland County, and the Mayo Plant located in Person County.

3 **SECTION 1.(c)** Subcritical coal fired generating facilities; specific requirements  
4 for retirement and associated designated replacement resources. – In order to continue the  
5 transition away from coal-fired electricity generation in an orderly and disciplined manner, and  
6 to minimize the financial and operational risks to customers of over reliance on coal generation,  
7 the electric public utilities shall retire all subcritical coal-fired generating facilities by December  
8 31, 2030 in the manner and subject to the conditions described herein.

9 (1) Allen Plant. – Except as provided in subdivisions (1) and (2) of subsection (e)  
10 of this section, the remaining units of the Allen Plant shall be retired on or  
11 before December 31, 2023. On or near the site of the Allen Plant, but in no  
12 event outside of Gaston County, the applicable electric public utility shall  
13 procure and own designated replacement resources comprised of one or more  
14 energy storage systems with a total capacity of approximately 20 MW AC /  
15 80 megawatt hours (MWh). The applicable electric public utility shall exert  
16 reasonable efforts to ensure that the designated replacement resources are  
17 constructed according to a timeline that allows for retirement of the coal-fired  
18 generating facility by the targeted retirement dates, and the utility shall  
19 provide updates to the Utilities Commission regarding the status of such  
20 efforts in its integrated resource plans.

21 (2) Marshall Units 1 and 2. – Except as provided in subdivisions (1) and (2) of  
22 subsection (e) of this section, Marshall Units 1 and 2 shall be retired on or  
23 before December 31, 2026. On or near the site of the Marshall Plant, but in no  
24 event outside of Catawba County, the applicable electric public utility shall  
25 procure and own designated replacement resources comprised of natural gas  
26 fueled simple cycle combustion turbine generating facilities with a generating  
27 capacity totaling approximately 900 MW; provided that the electric public  
28 utility shall be permitted to propose a smaller combustion turbine generating  
29 facility where the electric public utility determines that technological or other  
30 constraints so require. The applicable electric public utility shall exert  
31 reasonable efforts to ensure that the designated replacement resources are  
32 constructed according to a timeline that allows for retirement of the coal-fired  
33 generating facility by the targeted retirement dates, and the utility shall  
34 provide updates to the Utilities Commission regarding the status of such  
35 efforts in its integrated resource plans.

36 (3) Roxboro Plant. – A coal retirement and replacement plan shall be filed for  
37 the Roxboro Plant, on or before September 1, 2024. With respect to the  
38 designated replacement resource for the Roxboro Plant, the replacement  
39 resource shall be a generating facility located on the Roxboro Plant site, or, in  
40 the event that the applicable electric public utility, in its reasonable discretion,  
41 determines that it will be unable or infeasible to procure or construct a  
42 generating facility at the Roxboro Plant site, at another location in Person  
43 County, that satisfies all of the following criteria:

- 44 a. The resource has continuous generating and dispatch capabilities and  
45 other operating characteristics that provide system reliability benefits  
46 that are equal to or greater than the retiring Roxboro Plant.
- 47 b. The resource provides effective load carrying capability sufficient to  
48 ensure continued reliability of the system.
- 49 c. The resource has the ability to deliver continuous power at or near the  
50 maximum capacity of the resource for a continuous period of one week  
51 or longer without reliance on other grid resources.

- 1 (4) Cliffside Unit 5. – A coal retirement and replacement plan shall be filed for  
2 Cliffside Unit 5 on or before September 1, 2027. With respect to designated  
3 replacement resources for the facility, the replacement resource shall be an  
4 energy storage system to be procured and owned by the applicable electric  
5 public utility. The applicable electric public utility shall seek to locate a  
6 substantial portion of the ESS on the Cliffside Unit 5 site, but shall be  
7 permitted to site such ESS on or near other electric public utility property  
8 where such siting will provide increased benefit to customers.
- 9 (5) Mayo Plant. – A coal retirement and replacement plan shall be filed for the  
10 Mayo Plant on or before September 1, 2027. With respect to designated  
11 replacement resources for these facilities, the replacement resource for each  
12 facility shall be an ESS to be procured and owned by the applicable electric  
13 public utility. The applicable electric public utility shall seek to locate a  
14 substantial portion of the ESS on the site of the applicable subcritical  
15 coal-fired generating facility, but shall be permitted to site such ESS on or  
16 near other electric public utility property where such siting will provide  
17 increased benefit to customers.

18 **SECTION 1.(d)** Coal retirement and replacement plans generally. –

- 19 (1) A coal retirement and replacement plan shall include all of the following:
- 20 a. The proposed retirement date for the applicable subcritical coal-fired  
21 generating facility and the reasons for that proposed retirement date.
- 22 b. The proposed type, size, and location of the replacement resource or  
23 resources intended to replace the energy and capacity of the subcritical  
24 coal-fired generating facility in order to ensure safe, reliable, and  
25 cost-effective service to the electric public utility's customers and the  
26 projected timing of the commercial operation of such replacement  
27 resource or resources.
- 28 c. A forecast of capital costs, fuel costs, other operation and maintenance  
29 costs, and the capacity factors of the proposed replacement resource,  
30 as well as any assumptions about future regulatory compliance costs.
- 31 d. In the case of replacement resources that would require a certificate  
32 under G.S. 62-110.1 or otherwise, to the extent not already required  
33 above, the information that would be required in connection with an  
34 application for certificate of a generating facility under G.S. 62-110.1,  
35 except that the information required under or in connection with  
36 G.S. 62-110.1(d) shall not be required.
- 37 (2) After receipt of a coal retirement and replacement plan, the Commission shall  
38 do all of the following:
- 39 a. Establish a procedural schedule to allow interested parties to intervene  
40 in the proceeding, to facilitate discovery of evidence between and  
41 among parties to the proceeding, and to receive comments of the  
42 parties and the filing of any direct or rebuttal expert witness testimony.
- 43 b. Hold one or more public hearings and require the applicant to publish  
44 a single notice of the public hearing in a newspaper of general  
45 circulation in the county in which the subcritical coal-fired generating  
46 facility is located.
- 47 c. Schedule an evidentiary hearing to allow for the cross-examination of  
48 expert witnesses, to resolve all contested issues between the parties to  
49 the proceeding, and to address any questions or issues the Commission  
50 may raise upon its own motion.

- 1 (3) After completion of the process described in subdivision (2) of this subsection,  
2 the Commission shall issue an order approving, modifying, or rejecting an  
3 electric public utility's coal retirement and replacement plan within 180 days  
4 after the filing thereof. The Commission shall approve a coal retirement and  
5 replacement plan if it finds all of the following:
- 6 a. The coal retirement and replacement plan complies with the applicable  
7 requirements set forth in this subsection;
  - 8 b. The replacement resource proposed in a coal retirement and  
9 replacement plan is sized appropriately to: (i) ensure sufficient energy  
10 on an hourly basis over an annual period, and ensure sufficient  
11 capacity to serve anticipated peak electrical load plus an adequate  
12 planning reserve margin based upon the applicable electric public  
13 utility's then current projections of customer load requirements; and  
14 (ii) provide equivalent ancillary services and ensure compliance with  
15 any applicable reliability standards, including the North American  
16 Electric Reliability Corporation's (NERC) reliability standards.
  - 17 c. The electric public utility has reasonably and prudently utilized  
18 competitive equipment procurement practices to ensure that the  
19 projected cost of the proposed replacement resource is reasonable in  
20 accordance with the requirements set forth in subdivisions (3) through  
21 (5) of subsection (c) of this section.
- 22 (4) In a decision issued pursuant to subdivision (3) of this subsection approving  
23 any replacement resource, the Commission shall include an approved  
24 construction cost for each such replacement resource. If a replacement  
25 resource requires a certificate of public convenience and necessity under  
26 G.S. 62-110.1 or otherwise, and is approved by the Commission under this  
27 section, such replacement resource shall be deemed consistent with the public  
28 convenience and necessity and public interest for purposes of G.S. 62-110.1  
29 and the Commission shall issue a certificate of public convenience and  
30 necessity for such replacement resources at the time of its approval, and no  
31 further process shall be required under G.S. 62-110.1 except as otherwise  
32 addressed herein.

33 **SECTION 1.(e)** General provisions applicable to retirement of subcritical coal-fired  
34 generating facilities. –

- 35 (1) Notwithstanding any date established under subsections (c) or (d) of this  
36 section that requires retirement of a subcritical coal-fired generating facility,  
37 in the event the applicable electric public utility determines that the retirement  
38 of any such facility would have the potential to compromise reliability of the  
39 electric public utility's service, or otherwise impact the ability of the electric  
40 public utility to comply with any applicable reliability requirements, the  
41 electric public utility shall file notice with the Commission describing the  
42 reliability issues preventing compliance with the requirement for retirement  
43 by the date specified, and requesting a delay of retirement date. Upon receipt  
44 of a notice and request for retirement delay as authorized by this subdivision,  
45 the Commission may conduct a hearing regarding such delay, and shall issue  
46 an order approving or rejecting the request for delay within 90 days of receipt  
47 of such notice and request.
- 48 (2) In order to ensure the continued reliability of the electric system, no subcritical  
49 coal-fired generating facilities shall be retired unless and until the applicable  
50 designated replacement resource has been placed in-service; provided,  
51 however, that the electric public utility shall be authorized to retire the

- 1 subcritical coal-fired generating facility prior to the in-service date of the  
2 applicable designated replacement resource if the electric public utility  
3 determines that it will be able to maintain reliable service in that circumstance.  
4 (3) In the case of each subcritical coal-fired generating facility that is retired  
5 pursuant to this section, the applicable electric public utility shall be permitted  
6 to establish a regulatory asset for the remaining net book value of each  
7 subcritical coal-fired generating facility and amortize the regulatory asset at  
8 the same rate the subcritical coal-fired generating facility was previously  
9 being depreciated. The regulatory asset shall be included in rate base for  
10 ratemaking purposes, and in a future general rate proceeding, the Commission  
11 shall establish an amortization period for recovery and allow a return on the  
12 unamortized balance at the electric public utility's then authorized, net-of-tax,  
13 weighted average cost of capital.

14 **SECTION 1.(f)** General provisions applicable to designated replacement resources  
15 purchased and owned by the electric public utilities pursuant to subsection (c) of this section. –

- 16 (1) In order to ensure predictable and affordable customer electricity costs for all  
17 customers and to ensure an orderly and disciplined transition, the applicable  
18 electric utility shall:
- 19 a. In the case of the non-renewable generating facilities procured  
20 pursuant to subsection (c) of this section, utilize competitive  
21 procurement for the design, engineering, and construction of such  
22 generating facilities.
  - 23 b. In the case of any renewable energy facilities procured pursuant to  
24 subsection (c) of this section, competitively procure and purchase such  
25 facilities from third parties utilizing the procedures set forth and in  
26 compliance with the requirements of G.S. 62-110.8 for procurements  
27 occurring after January 1, 2022; provided, however, that: (i) the  
28 procuring electric public utility shall own and operate all of the  
29 renewable energy facilities procured pursuant to this section and the  
30 percentage allocation of ownership between third parties and the  
31 electric public utilities for procurements commencing after January 1,  
32 2021 that is specified in subsection (b1) of G.S. 62-110.8 for  
33 renewable generating facilities shall not apply to procurements of  
34 renewable energy facilities pursuant to subsection (c) of this section;  
35 and (ii) the cost cap specified in subsection (g1) of G.S. 62-110.1 shall  
36 not apply to the procurement of renewable energy facilities pursuant  
37 to subsection (c) of this section.
  - 38 c. In the case of the ESS procured pursuant to subsection (c) of this  
39 section, competitively procure and purchase such facilities from third  
40 parties utilizing the procurement procedures and requirements for  
41 independent oversight set forth in G.S. 62-110.8 for procurements  
42 occurring after January 1, 2022; provided, however, that: (i) the  
43 procuring electric public utility shall own and operate all of the ESS  
44 procured pursuant to this section and the percentage allocation of  
45 ownership between third parties and the electric public utilities for  
46 procurements commencing after January 1, 2021 that is specified in  
47 subsection (b1) of G.S. 62-110.8 for renewable generating facilities  
48 shall not apply to procurements of ESS pursuant to subsection (c) of  
49 this section; and (ii) the cost cap specified in subsection (g1) of  
50 G.S. 62-110.1 shall not apply to the procurement of ESS pursuant to  
51 subsection (c) of this section.

- 1           (2)    The designated replacement resources identified in subsection (c) of this  
2           section that require a certificate of public convenience and necessity under  
3           G.S. 62-110.1, or otherwise, shall be deemed consistent with the public  
4           convenience and necessity and public interest for purposes of G.S. 62-110.1  
5           so long as the applicable electric public utility reasonably and prudently  
6           procures such replacement generation in a manner consistent with subdivision  
7           (1) of this subsection.
- 8           (3)    Notwithstanding G.S. 62-110.1, the Commission shall provide an expedited  
9           decision on an application for a certificate of public convenience for all such  
10          resources. The Commission shall render its decision on an application for a  
11          certificate, including any related transmission line needed for the new  
12          generation facility, within 90 days of the date the application is filed. An  
13          application for a certificate of public convenience and necessity to construct  
14          or procure those designated replacement resources identified in subsection (c)  
15          of this section that require a certificate of public convenience and necessity  
16          and the renewable generating facilities purchased and owned by the electric  
17          public utilities pursuant to G.S. 62-110.8 through procurements occurring  
18          after January 1, 2021 shall be subject to all of the following:
- 19          a.     The applicable electric public utility shall provide written notice to the  
20          Commission of the date the electric public utility intends to file an  
21          application no less than 30 days prior to the submission of the  
22          application.
- 23          b.     When the electric public utility applies for a certificate as provided in  
24          this subdivision, it shall submit to the Commission an estimate of the  
25          costs of construction of the generating facility in such detail as the  
26          Commission may require.
- 27          c.     G.S. 62-110.1(d) and (e) and G.S. 62-82(a) shall not apply to such  
28          applications.
- 29          d.     The Commission shall hold a single public hearing for such  
30          applications and require the applicant to publish a single notice of the  
31          public hearing in a newspaper of general circulation in the county in  
32          which the generating facility is located.
- 33          (4)    The electric public utilities shall be permitted to recover from its customers  
34          the reasonably and prudently incurred cost of all generation facilities and  
35          energy storage systems purchased or constructed pursuant to subsections (c)  
36          or (d) of this section. In the case of an energy storage system approved by the  
37          Commission pursuant to subsection (d) of this section, there shall be a  
38          rebuttable presumption that the electric public utility's actual costs are  
39          reasonable and prudent if such actual costs are at or below the projected costs  
40          approved by the Commission. In the case of certificated generation facility  
41          approved by the Commission pursuant to this subsection or subsection (d) of  
42          this section or procured pursuant to G.S. 62-110.8, notwithstanding  
43          G.S. 62-110.1(f1), there shall be a rebuttable presumption that the electric  
44          public utility's actual costs are reasonable and prudent if such actual costs are  
45          at or below the projected costs approved by the Commission; provided that  
46          upon the request of the electric public utility or upon its own motion pursuant  
47          to G.S. 62-110.1(f), the Commission may conduct an ongoing review of  
48          construction of the facility under G.S. 62-110.1(f), in which case the cost  
49          recovery provisions of G.S. 62 110.1(f1) shall apply except that the electric  
50          public utility may seek cost recovery in a rate case under either G.S. 62-133  
51          or G.S. 62-133.16. The electric public utilities shall be permitted to establish

1 a regulatory asset and defer to such regulatory asset the incremental costs of  
2 all such costs incurred pursuant to this section until such time as the costs can  
3 be reflected in customer rates. The types of incremental costs that may be  
4 deferred include, but are not limited to, operation and maintenance expenses,  
5 administration costs, property tax, depreciation expenses, income taxes,  
6 carrying costs related to electric plant investments. and regulatory assets at the  
7 electric public utility's then authorized, net-of-tax, weighted average cost of  
8 capital.

9 **SECTION 1.(g)** G.S. 62-110.8 reads as rewritten:

10 **"§ 62-110.8. Competitive procurement of renewable energy.**

11 (a) Each electric public utility shall file for Commission approval a program for the  
12 competitive procurement of energy and capacity from renewable energy facilities with the  
13 purpose of adding renewable energy to the State's generation portfolio in a manner that allows  
14 the State's electric public utilities to continue to reliably and cost-effectively serve customers'  
15 future energy needs. Renewable energy facilities eligible to participate in the competitive  
16 procurement shall include those facilities that use renewable energy resources identified in  
17 G.S. 62-133.8(a)(8) ~~but but~~, except as provided in subsection (b1) of this section, shall be limited  
18 to facilities with a nameplate capacity rating of 80 megawatts (MW) AC or less that are  
19 placed in service after the date of the electric public utility's initial competitive procurement.  
20 Subject to the limitations set forth in subsections (b) and (c) of this section, the electric public  
21 utilities shall issue requests for proposals to procure and shall procure, energy and capacity from  
22 renewable energy facilities in the aggregate amount of 2,660 megawatts (MW), and the total  
23 amount shall be reasonably allocated over a term of 45 months beginning when the Commission  
24 approves the program. 7,327 megawatts (MW) AC, and the total amount shall be reasonably  
25 allocated over a term of 106 months beginning when the Commission approves the program;  
26 provided, however, that the electric public utilities shall conduct an annual procurement of  
27 approximately 777 megawatts (MW) AC each calendar year beginning in 2021 and concluding  
28 in 2026. The electric public utilities shall be permitted to petition the Commission for approval  
29 to modify the procurement schedule established herein in the event that administration of annual  
30 procurements becomes impractical due to the need to align with then existing interconnection  
31 study processes or other factors beyond the utilities' control, and the Commission shall approve  
32 such modifications if it determines that the modifications would be in the public interest. The  
33 Commission shall require the additional competitive procurement of renewable energy capacity  
34 by the electric public utilities in an amount that includes all of the following: (i) any unawarded  
35 portion of the initial competitive procurement required by this subsection; (ii) any deficit in  
36 renewable energy capacity identified pursuant to subdivision (1) of subsection (b2)(b) of this  
37 section; and (iii) any capacity reallocated pursuant to G.S. 62-159.2. In addition, at the  
38 termination of the initial competitive procurement period of 45 months, the offering of a new  
39 renewable energy resources competitive procurement and the amount to be procured shall be  
40 determined by the Commission, based on a showing of need evidenced by the electric public  
41 utility's most recent biennial integrated resource plan or annual update approved by the  
42 Commission pursuant to G.S. 62-110.1(e). 106 months, the Commission shall determine whether  
43 it is in the interest of ratepayers to require further competitive procurement of renewable  
44 generating facilities by the electric public utilities under this subsection, and shall also determine  
45 the amount to be procured beyond that required by this subsection, and the allocation of  
46 ownership between third parties and electric public utilities. The Commission's determination  
47 shall be based on the electric public utility's most recent biennial integrated resource plan or  
48 annual update accepted or approved by the Commission, provided that such plan assures  
49 adequate, reliable utility service.

50 (b) Electric public utilities may jointly or individually implement the aggregate  
51 competitive procurement requirements set forth in subsection (a) of this section ~~and~~ and, with

1 respect to procurements commencing prior to January 1, 2021, may satisfy such requirements for  
2 the procurement of renewable energy capacity to be supplied by renewable energy facilities  
3 through any of the following: (i) renewable energy facilities to be acquired from third parties and  
4 subsequently owned and operated by the soliciting public utility or utilities; (ii) renewable energy  
5 facilities to be constructed, owned, and operated by the soliciting public utility or utilities subject  
6 to the limitations of subdivision (4) of this subsection; or (iii) the purchase of renewable energy,  
7 capacity, and environmental and renewable attributes from renewable energy facilities owned  
8 and operated by third parties that commit to allow the procuring public utility rights to dispatch,  
9 operate, and control the solicited renewable energy facilities in the same manner as the utility's  
10 own generating resources.

11 (b1) All procurements required by subsection (a) of this section commencing after January  
12 1, 2021, and continuing through December 31, 2026, shall be subject to the following  
13 requirements:

14 (1) Forty-five percent (45%) of the total MW (AC) of renewable energy facilities  
15 scheduled to be procured in procurements commencing after January 1, 2021  
16 shall be supplied through the execution of power purchase agreements with  
17 third parties pursuant to which the electric public utility purchases of  
18 renewable energy, capacity, and environmental and renewable attributes from  
19 renewable energy facilities owned and operated by third parties that commit  
20 to allow the procuring electric public utility rights to dispatch, operate, and  
21 control the solicited renewable energy facilities in the same manner as  
22 the utility's own generating resources.

23 (2) Fifty-five percent (55%) of the total MW (AC) of renewable energy facilities  
24 scheduled to be procured through procurements commencing after January 1,  
25 2021 shall be supplied from renewable energy facilities purchased from third  
26 parties and owned and operated by the soliciting electric public utility. The  
27 cap on facility nameplate capacity of 80 megawatts (MW) AC or less  
28 established by subsection (a) of this section shall not apply to facilities  
29 procured pursuant to this subdivision.

30 (b2) Procured renewable energy capacity, as provided for in this section, shall be subject  
31 to the following limitations:

32 (1) ~~If prior to the end of the initial 45-month competitive procurement period the~~  
33 ~~public utilities subject to this section have executed power purchase~~  
34 ~~agreements and interconnection agreements for renewable energy capacity~~  
35 ~~within their balancing authority areas that are not subject to economic dispatch~~  
36 ~~or curtailment and were not procured pursuant to G.S. 62-159.2 having an~~  
37 ~~aggregate capacity in excess of 3,500 megawatts (MW), the Commission shall~~  
38 ~~reduce the competitive procurement aggregate amount by the amount of such~~  
39 ~~exceedance. If the aggregate capacity of such renewable energy facilities is~~  
40 ~~less than 3,500 megawatts (MW) at the end of the initial 45-month competitive~~  
41 ~~procurement period, the Commission shall require the electric public utilities~~  
42 ~~to conduct an additional competitive procurement in the amount of such~~  
43 ~~deficit. In the event that it is reasonably projected that, on or before January~~  
44 ~~1, 2027, the electric public utilities subject to the procurement obligation~~  
45 ~~under subsection (a) of this section will have executed power purchase~~  
46 ~~agreements and interconnection agreements with renewable generating~~  
47 ~~facilities within their balancing authority areas having an aggregate MW~~  
48 ~~capacity (AC) in excess of 3,500 MW (AC), exclusive of power purchase~~  
49 ~~agreements entered into pursuant to this section, G.S. 62-159.2, and~~  
50 ~~G.S. 62-62-126.8B, the Commission shall reduce the total aggregate MW~~  
51 ~~capacity (AC) of renewable generating facilities required for procurement~~

1 under this section by an amount equal to the difference between: (i) the  
2 amount of aggregate MW capacity (AC) of renewable generating facilities  
3 with executed power purchase agreements and interconnection agreements,  
4 including all such renewable generating facilities located in the electric public  
5 utility's balancing authority area, whether located inside or outside the  
6 geographic boundaries of the State but exclusive of power purchase  
7 agreements entered into pursuant to this section, G.S. 62-159.2, and  
8 G.S. 62-62-126.8B; and (ii) 3,500 MW (AC).

9 (2) ~~To ensure the cost-effectiveness of procured~~-new renewable energy resources,  
10 ~~each public utility's procurement obligation~~ the price to be paid under any  
11 power purchase agreements for third-party owned resources, combined with  
12 the cost of any necessary transmission or distribution upgrade, shall be capped  
13 by the public utility's current forecast of its avoided cost calculated over the  
14 term of the power purchase agreement. The public utility's current forecast of  
15 its avoided cost shall be consistent with the Commission-approved avoided  
16 cost methodology.

17 (3) Each public utility shall submit to the Commission for approval and make  
18 publicly available at 30 days prior to each competitive procurement  
19 solicitation a pro forma ~~contract~~ power purchase agreement to be utilized for  
20 the purpose of informing market participants of terms and conditions of the  
21 competitive procurement. Each pro forma ~~contract~~ power purchase agreement  
22 shall define limits and compensation for resource dispatch and  
23 ~~curtailments~~ curtailments; provided, however, that curtailment shall be  
24 limited to a percentage of the expected output of the generation facility that is  
25 determined by the Commission to be in the public interest. The pro forma  
26 ~~contract~~ power purchase agreement shall be for a term of 20 years; provided,  
27 however, the Commission may approve a contract term of a different duration  
28 if the Commission determines that it is in the public interest to do so.

29 (4) ~~No~~ With respect only to those procurements commencing prior to January 1,  
30 2021, more than thirty percent (30%) of an electric public utility's competitive  
31 procurement requirement may be satisfied through the utility's own  
32 development of renewable energy facilities offered by the electric public  
33 utility or any subsidiary of the electric public utility that is located within the  
34 electric public utility's service territory. This limitation shall not apply to any  
35 renewable energy facilities acquired by an electric public utility that are  
36 selected through the competitive procurement and are located within the  
37 electric public utility's service territory.

38 (c) Subject to the aggregate competitive procurement requirements established by this  
39 section, the electric public utilities shall have the authority to determine the location and allocated  
40 amount of the competitive procurement within their respective balancing authority areas, whether  
41 located inside or outside the geographic boundaries of the State, taking into consideration (i) the  
42 State's desire to foster diversification of siting of renewable energy resources throughout the  
43 State; (ii) the efficiency and reliability impacts of siting of additional renewable energy facilities  
44 in each public utility's service territory; and (iii) the potential for increased delivered cost to a  
45 public utility's customers as a result of siting additional renewable energy facilities in a public  
46 utility's service territory, including additional costs of ancillary services that may be imposed due  
47 to the operational or locational characteristics of a specific renewable energy resource  
48 technology, such as nondispatchability, unreliability of availability, and creation or exacerbation  
49 of system congestion that may increase redispatch costs. In the case of renewable energy facilities  
50 to be procured and owned by the electric public utilities pursuant to this section, the electric  
51 public utilities shall be permitted through the competitive processes described herein to solicit

1 bids for the construction of such renewable energy facilities on or near property owned or  
2 controlled by the electric public utility, including the site of any retiring subcritical coal-fired  
3 generating facility, where such sites will provide benefits to customers, including through  
4 reduced interconnection or infrastructure costs.

5 (d) For all procurements commencing prior to January 1, 2022, the~~The~~ competitive  
6 procurement of renewable energy capacity established pursuant to this section shall be  
7 independently administered by a third-party entity to be approved by the Commission.~~The~~  
8 third-party entity shallCommission: provided that in the case of any procurement commencing  
9 after January 1, 2021 but prior to January 1, 2022, the electric public utilities shall be permitted  
10 to directly assist the third-party entity and provide input on all aspects of the procurement and  
11 shall collaborate with the third-party entity to develop and publish the methodology used to  
12 evaluate responses received pursuant to a competitive procurement solicitation and to ensure that  
13 all responses are treated equitably. For all procurements commencing after January 1, 2022, the  
14 competitive procurement of renewable energy capacity required pursuant to this section shall be  
15 administered by the electric public utilities in accordance with the rules to be adopted pursuant  
16 to subdivision (1) of subsection (h) of this section, and subject to oversight and evaluation by a  
17 third-party entity to be approved by the Commission. All reasonable and prudent administrative  
18 and related expenses incurred to implement this subsection shall be recovered from market  
19 participants through administrative fees levied upon those that participate in the competitive  
20 bidding process, as approved by the Commission.

21 (e) ~~An~~ With respect only to those procurements commencing prior to January 1, 2021,  
22 an electric public utility may participate in any competitive procurement process, but shall only  
23 participate within its own assigned service territory. If the public utility uses nonpublicly  
24 available information concerning its own distribution or transmission system in preparing a  
25 proposal to a competitive procurement, the public utility shall make such information available  
26 to third parties that have notified the public utility of their intention to submit a proposal to the  
27 same request for proposals.

28 (e1) In the case of all procurements commencing after January 1, 2021, neither the electric  
29 public utilities nor any of their affiliates shall be permitted to submit bids into the competitive  
30 procurement process or to have any financial interest in third-party bidders.

31 (e2) The renewable generating facilities purchased and owned by the electric public  
32 utilities pursuant to this section through procurements occurring after January 1, 2021 shall be  
33 deemed consistent with the public convenience and necessity and public interest for purposes of  
34 G.S. 62-110.1 so long as the renewable generating facilities were procured in compliance with  
35 the procurement process established under this section.

36 (f) For purposes of this section, the term "balancing authority" means the entity that  
37 integrates resource plans ahead of time, maintains load-interchange-generation balance within a  
38 balancing authority area, and supports interconnection frequency in real time, and the term  
39 "balancing authority area" means the collection of generation, transmission, and loads within the  
40 metered boundaries of the balancing authority, and the balancing authority maintains  
41 load-resource balance within this area.

42 (g) An electric public utility shall be authorized to recover the costs of all purchases of  
43 energy, capacity, and environmental and renewable attributes from third-party renewable energy  
44 facilities and to recover the authorized revenue of any utility-owned assets ~~that are~~ procured  
45 pursuant to this section prior to January 1, 2021 through an annual rider approved by the  
46 Commission and reviewed annually. Provided it is in the public interest, the authorized revenue  
47 for any such renewable energy facilities owned by an electric public utility and procured pursuant  
48 to this section prior to January 1, 2021, may be calculated on a market basis in lieu of  
49 cost-of-service based recovery, using data from the applicable competitive procurement to  
50 determine the market price in accordance with the methodology established by the Commission  
51 pursuant to subsection (h) of this section. The annual increase in the aggregate amount of these

1 costs that are recoverable by an electric public utility pursuant to this subsection shall not exceed  
2 one percent (1%) of the electric public utility's total North Carolina retail jurisdictional gross  
3 revenues for the preceding calendar year.

4 (g1) With respect to all procurements commencing after January 1, 2021, an electric public  
5 utility shall be permitted to recover from its customers the reasonably and prudently incurred  
6 costs paid under power purchase agreements executed pursuant to this section through the rider  
7 authorized under subsection (g) of this section; provided, however, costs that may be recovered  
8 by the utility for utility-owned renewable generating facilities shall be subject to the same cost  
9 caps established under subdivision (2) of subsection (b2) of this section applicable to power  
10 purchases of third-party owned resources. An electric public utility shall be permitted to establish  
11 a regulatory asset and defer to such regulatory asset the incremental costs of all such costs  
12 incurred pursuant to this section until such time as the costs can be reflected in customer rates.  
13 The types of incremental costs that may be deferred include, but are not limited to, operation and  
14 maintenance expenses, administration costs, property tax, depreciation expense, income taxes,  
15 carrying costs related to electric plant investments, and regulatory assets at the electric public  
16 utility's then authorized, net-of-tax, weighted average cost of capital.

17 (g2) In determining the most cost-effective proposals in any procurement process under  
18 this section, the electric public utility shall take into account the cost of any needed transmission  
19 or distribution upgrades but, in the case of any proposals selected by the electric public utility,  
20 such transmission or distribution upgrades costs shall not be directly assigned to the bidder, but  
21 instead shall be included in the electric public utility's rate base for ratemaking purposes. In  
22 addition, the electric public utility shall be permitted to establish a regulatory asset and defer to  
23 such regulatory asset the incremental cost of all such upgrades, along with associated carrying  
24 costs based on the electric public utility's then authorized net-of-tax, weighted average cost of  
25 capital, until such time as the costs can be reflected in customer rates. In a future general rate  
26 proceeding, the Commission shall establish an amortization period for recovery and allow a  
27 return on the unamortized balance at the electric public utility's then authorized, net-of-tax,  
28 weighted average cost of capital.

29 (h) The Commission shall adopt rules to implement the requirements of this section, as  
30 follows:

- 31 (1) Oversight of the competitive procurement ~~program-program~~ by the  
32 Commission and by independent third parties. No later than May 1, 2022, the  
33 Commission's rules shall be amended to provide for (i) administration of the  
34 procurement process, including establishing the selection methodology and  
35 selection of projects, by the electric public utilities subject to the oversight of  
36 an independent evaluator retained by the utilities pursuant to a contract  
37 approved by the Commission; (ii) approval by the Commission of the electric  
38 public utilities' selection methodology and the independent evaluator's review  
39 procedures; (iii) detailed reports by the independent evaluator to the  
40 Commission regarding the results of each procurement; and (iv) any further  
41 changes related to the foregoing, including modification of communication  
42 restrictions deemed appropriate by the Commission.
- 43 (2) To provide for a waiver of regulatory conditions or code of conduct  
44 requirements that would unreasonably restrict a public utility or its affiliates  
45 from participating in the competitive procurement ~~process~~, with respect to  
46 procurements occurring under this section prior to January 1, 2021, unless the  
47 Commission finds that such a waiver would not hold the public utility's  
48 customers harmless.
- 49 (3) Establishment of a procedure for expedited review and approval of certificates  
50 of public convenience and necessity, or the transfer thereof, for renewable  
51 energy facilities owned by the public utility and procured pursuant to this

1 section. The Commission shall issue an order not later than 30 days after a  
2 petition for a certificate is filed by the public utility.

3 (4) Establishment of a methodology to allow an electric public utility to recover  
4 its costs pursuant to ~~subsection (g)~~ subsections (g), (g1), and (g2) of this  
5 section.

6 (5) Establishment of a procedure for the Commission to modify or delay  
7 implementation of the provisions of this section in whole or in part if the  
8 Commission determines that it is in the public interest to do so.

9 ..."

10 **SECTION 1.(h)** The requirements of subsections (a) through (g) of this section  
11 shall not apply to an electric public utility serving fewer than 150,000 North  
12 Carolina retail jurisdictional customers as of January 1, 2021.

13 **SECTION 1.(i)** G.S. 62-133.2 reads as rewritten:

14 "**§ 62-133.2. Fuel and fuel-related charge adjustments for electric utilities.**

15 ...

16 (d) The Commission shall provide for notice of a public hearing with reasonable and  
17 adequate time for investigation and for all intervenors to prepare for hearing. At the hearing the  
18 Commission shall receive evidence from the utility, the Public Staff, and any intervenor desiring  
19 to submit evidence, and from the public generally. In reaching its decision, the Commission shall  
20 consider all evidence required under subsection (c) of this section as well as any and all other  
21 competent evidence that may assist the Commission in reaching its decision including changes  
22 in the cost of fuel consumed and fuel-related costs that occur within a reasonable time, as  
23 determined by the Commission, after the test period is closed. The Commission shall incorporate  
24 in its cost of fuel and fuel-related costs determination under this subsection the experienced  
25 over-recovery or under-recovery of reasonable costs of fuel and fuel-related costs prudently  
26 incurred during the test period, based upon the prudent standards set pursuant to subsection (d1)  
27 of this section, in fixing an increment or decrement rider. Upon request of the electric public  
28 utility, the Commission shall also incorporate in this determination the experienced  
29 over-recovery or under-recovery of costs of fuel and fuel-related costs through the date that is 30  
30 calendar days prior to the date of the hearing, provided that the reasonableness and prudence of  
31 these costs shall be subject to review in the utility's next annual hearing pursuant to this section.  
32 The Commission shall use deferral accounting, and consecutive test periods, in complying with  
33 this subsection, and the over-recovery or under-recovery portion of the increment or decrement  
34 shall be reflected in rates for 12 months, notwithstanding any changes in the base fuel cost in a  
35 general rate case. The burden of proof as to the correctness and reasonableness of the charge and  
36 as to whether the cost of fuel and fuel-related costs were reasonably and prudently incurred shall  
37 be on the utility. The Commission shall allow only that portion, if any, of a requested cost of fuel  
38 and fuel-related costs adjustment that is based on adjusted and reasonable cost of fuel and  
39 fuel-related costs prudently incurred under efficient management and economic operations.  
40 Efficient management and economic operations include actions and decisions that modify  
41 commitment and dispatch to manage seasonal demand, mitigate fuel supply security and  
42 transportation risk, and maintain dispatchable capacity value. In evaluating whether cost of fuel  
43 and fuel-related costs were reasonable and prudently incurred, the Commission shall apply the  
44 rule adopted pursuant to subsection (d1) of this section. To the extent that the Commission  
45 determines that an increment or decrement to the rates of the utility due to changes in the cost of  
46 fuel and fuel-related costs over or under base fuel costs established in the preceding general rate  
47 case is just and reasonable, the Commission shall order that the increment or decrement become  
48 effective for all sales of electricity and remain in effect until changed in a subsequent general rate  
49 case or annual proceeding under this section.

50 ...."

51 **SECTION 1.(k)** This section is effective when it becomes law.

1  
2  
3 **AUTHORIZE FINANCING OF CERTAIN ENERGY TRANSITION COSTS**

4 **SECTION 2.(a)** Article 8 of Chapter 62 of the General Statutes is amended by adding  
5 a new section to read:

6 **"§ 62-173. Financing for certain energy transition costs.**

7 (a) Definitions. – The following definitions apply in this section:

8 (1) Ancillary agreement. – A bond, insurance policy, letter of credit, reserve  
9 account, surety bond, interest rate lock or swap arrangement, hedging  
10 arrangement, liquidity or credit support arrangement, or other financial  
11 arrangement entered into in connection with energy transition bonds.

12 (2) Assignee. – A legally recognized entity to which a public utility assigns, sells,  
13 or transfers, other than as security, all or a portion of its interest in or right to  
14 energy transition property. The term includes a corporation, limited liability  
15 company, general partnership or limited partnership, public authority, trust,  
16 financing entity, or any entity to which an assignee assigns, sells, or transfers,  
17 other than as security, its interest in or right to energy transition property.

18 (3) Bondholder. – A person who holds an energy transition bond.

19 (4) Code. – The Uniform Commercial Code, Chapter 25 of the General Statutes.

20 (5) Commission. – The North Carolina Utilities Commission.

21 (6) Energy transition bonds. – Bonds, debentures, notes, certificates of  
22 participation, certificates of beneficial interest, certificates of ownership, or  
23 other evidences of indebtedness or ownership that are issued by a public utility  
24 or an assignee pursuant to a financing order, the proceeds of which are used  
25 directly or indirectly to recover, finance, or refinance Commission-approved  
26 energy transition costs and financing costs, and that are secured by or payable  
27 from energy transition property. If certificates of participation or ownership  
28 are issued, references in this section to principal, interest, or premium shall be  
29 construed to refer to comparable amounts under those certificates.

30 (7) Energy transition charge. – The amounts authorized by the Commission to  
31 repay, finance, or refinance energy transition costs and financing costs and  
32 that are nonbypassable charges (i) imposed on and part of all retail customer  
33 bills, (ii) collected by a public utility or its successors or assignees, or a  
34 collection agent, in full, separate and apart from the public utility's base rates,  
35 and (iii) paid by all existing or future retail customers receiving transmission  
36 or distribution service, or both, from the public utility or its successors or  
37 assignees under Commission-approved rate schedules or under special  
38 contracts, even if a customer elects to purchase electricity from an alternative  
39 electricity supplier following a fundamental change in regulation of public  
40 utilities in this State.

41 (8) Energy transition costs. – A cost other than a monetary penalty, fine, or  
42 forfeiture assessed against a public utility by a government agency or court  
43 under a federal or State environmental statute, rule, or regulation, for  
44 retirement of Marshall Units 1 and 2, the Allen Plant, the Roxboro Plant, the  
45 Cliffside Unit 5 Plant, and the Mayo Plant. The total amount that shall be  
46 securitized as provided by this subdivision shall be five hundred million  
47 dollars (\$500,000,000), which shall be allocated among these plants in a  
48 manner that realizes the greatest cost savings to ratepayers as determined by  
49 the Commission. Such costs include:

50 a. An amount determined and approved by the Commission not to exceed  
51 the total aggregate unrecovered net book value, plus the costs set forth

1 in subdivisions (b), (c), and (d) of this subsection, of the subcritical  
2 coal-fired electric generating facilities at Marshall Units 1 and 2, the  
3 Allen Plant, the Roxboro Plant, the Cliffside Unit 5 Plant, and the  
4 Mayo Plant.

5 b. The following costs the public utility has incurred or will incur caused  
6 by, associated with, or that remain as a result of the early retirement of  
7 electric generating facilities at Marshall Units 1 and 2, the Allen Plant,  
8 the Roxboro Plant, the Cliffside Unit 5 Plant, and the Mayo Plant:

9 1. All incremental costs, including capital costs, appropriate for  
10 recovery from existing and future retail customers receiving  
11 transmission or distribution service from the electric public  
12 utility that the utility has incurred or expects to incur as a result  
13 of the early retirement of the Marshall Units 1 and 2, the Allen  
14 Plant, the Roxboro Plant, the Cliffside Unit 5 Plant, and the  
15 Mayo Plant, including the costs of decommissioning and  
16 restoring the site of such early retired electric generating  
17 facilities, except for costs incurred pursuant to  
18 G.S. 130A-309.200 to G.S. 130A-309.226 or 40 C.F.R.  
19 Subpart D, which are not subject to this section.

20 2. The electric public utility's cost of capital from the date this  
21 section becomes effective to the date the energy transition  
22 bonds are issued, calculated using the public utility's weighted  
23 average cost of capital as defined in its most recent base rate  
24 case proceeding before the Commission net of applicable  
25 income tax savings related to the interest component. Such  
26 costs also include other applicable capital and operating costs,  
27 accrued carrying charges, deferred expenses, reductions for  
28 applicable insurance and salvage proceeds and the costs of  
29 retiring any existing indebtedness, fees, costs, and expenses to  
30 modify existing debt agreements or for waivers or consents  
31 related to existing debt agreements.

32 c. Energy transition costs shall be net of applicable insurance proceeds,  
33 tax benefits, and any other amounts intended to reimburse the public  
34 utility for energy transition activities such as government grants, or aid  
35 of any kind and where determined appropriate by the Commission, and  
36 may include adjustments for capital replacement and operating costs  
37 previously considered in determining normal amounts in the public  
38 utility's most recent general rate case proceeding.

39 d. With respect to energy transition costs that the public utility expects to  
40 incur, any difference between costs expected to be incurred and actual,  
41 reasonable and prudent costs incurred, or any other rate-making  
42 adjustments appropriate to fairly and reasonably assign or allocate  
43 energy transition cost recovery to customers over time, shall be  
44 addressed in a future general rate proceeding, as may be facilitated by  
45 other orders of the Commission issued at the time or prior to such  
46 proceeding; provided, however, that the Commission's adoption of a  
47 financing order and approval of the issuance of energy transition bonds  
48 may not be revoked or otherwise modified.

49 (9) Energy transition property. – All of the following:

50 a. All rights and interests of a public utility or successor or assignee of  
51 the public utility under a financing order, including the right to impose,

- 1 bill, charge, collect, and receive energy transition charges authorized  
2 under the financing order and to obtain periodic adjustments to such  
3 charges as provided in the financing order.
- 4 b. All revenues, collections, claims, rights to payments, payments,  
5 money, or proceeds arising from the rights and interests specified in  
6 the financing order, regardless of whether such revenues, collections,  
7 claims, rights to payment, payments, money, or proceeds are imposed,  
8 billed, received, collected, or maintained together with or commingled  
9 with other revenues, collections, rights to payment, payments, money,  
10 or proceeds.
- 11 (10) Financing costs. – The term includes all of the following:
- 12 a. Interest and acquisition, defeasance, or redemption premiums payable  
13 on energy transition bonds.
- 14 b. Redemption premiums or make-whole payments related to the early  
15 redemption of the public utility's first mortgage bonds or other debt  
16 associated with the retired electric generating facility.
- 17 c. Any payment required under an ancillary agreement and any amount  
18 required to fund or replenish a reserve account or other accounts  
19 established under the terms of any indenture, ancillary agreement, or  
20 other financing documents pertaining to energy transition bonds.
- 21 d. Any other cost related to issuing, supporting, repaying, refunding, and  
22 servicing energy transition bonds, including servicing fees, accounting  
23 and auditing fees, trustee fees, legal fees, consulting fees, structuring  
24 adviser fees, administrative fees, placement and underwriting fees,  
25 independent director and manager fees, capitalized interest, rating  
26 agency fees, stock exchange listing and compliance fees, security  
27 registration fees, filing fees, information technology programming  
28 costs, and any other costs necessary to otherwise ensure the timely  
29 payment of energy transition bonds or other amounts or charges  
30 payable in connection with the bonds, including costs related to  
31 obtaining the financing order.
- 32 e. Any taxes and license fees or other fees imposed on the revenues  
33 generated from the collection of the energy transition charge or  
34 otherwise resulting from the collection of energy transition charges, in  
35 any such case whether paid, payable, or accrued.
- 36 f. Any State and local taxes, franchise, gross receipts, and other taxes or  
37 similar charges, including regulatory assessment fees, whether paid,  
38 payable, or accrued.
- 39 g. Any costs incurred by the Commission or public staff for any outside  
40 consultants or counsel retained in connection with the securitization of  
41 energy transition costs.
- 42 (11) Financing order. – An order that authorizes the issuance of energy transition  
43 bonds; the imposition, collection, and periodic adjustments of an energy  
44 transition charge; the creation of energy transition property; and the sale,  
45 assignment, or transfer of energy transition property to an assignee.
- 46 (12) Financing party. – Bondholders and trustees, collateral agents, any party under  
47 an ancillary agreement, or any other person acting for the benefit of  
48 bondholders.
- 49 (13) Financing statement. – Defined in Article 9 of the Code.

- 1           (14) Pledgee. – A financing party to which a public utility or its successors or  
2           assignees mortgages, negotiates, pledges, or creates a security interest or lien  
3           on all or any portion of its interest in or right to energy transition property.  
4           (15) Public utility. – A public utility, as defined in G.S. 62-3, that sells electric  
5           power to retail electric customers in the State.  
6       (b) Financing Orders. –  
7           (1) A public utility shall petition the Commission for a financing order for energy  
8           transition costs. The petition shall include all of the following:  
9           a. The energy transition costs incurred by the utility and an estimate of  
10           the costs that are being undertaken but are not completed.  
11           b. An estimate of the financing costs related to the energy transition  
12           bonds.  
13           c. An estimate of the energy transition charges necessary to recover the  
14           energy transition costs and financing costs and the proposed period for  
15           recovery of such costs.  
16           d. A comparison between the net present value of the costs to customers  
17           that are estimated to result from the issuance of energy transition bonds  
18           and the costs that would result from the application of the traditional  
19           method of financing and recovering energy transition costs from  
20           customers. The comparison shall demonstrate that the issuance of  
21           energy transition bonds and the imposition of energy transition  
22           charges are expected to provide quantifiable benefits to customers.  
23           e. Direct testimony and exhibits supporting the petition.  
24           (2) If a public utility is subject to a settlement agreement that governs the type  
25           and amount of principal costs that could be included in energy transition costs,  
26           and the principal costs are not already subject to review and approval by the  
27           Commission in a separate proceeding, then the public utility shall file a  
28           petition with the Commission for review and approval of those principal costs  
29           no later than 90 days before filing a petition for a financing order pursuant to  
30           this section.  
31           (3) Petition and order. –  
32           a. Proceedings on a petition submitted pursuant to this subdivision begin  
33           with the petition by a public utility, initially filed on or before January  
34           1, 2023, subject to the time frame specified in subdivision (2) of this  
35           subsection, if applicable, and shall be disposed of in accordance with  
36           the requirements of this Chapter and the rules of the Commission,  
37           except as follows:  
38           1. Within 14 days after the date the petition is filed, the  
39           Commission shall establish a procedural schedule that permits  
40           a Commission decision no later than 135 days after the date the  
41           petition is filed.  
42           2. No later than 135 days after the date the petition is filed, the  
43           Commission shall issue a financing order or an order rejecting  
44           the petition. If a petition for a financing order is rejected, the  
45           Commission shall include in its order the reasons for the  
46           rejection, and the utility shall resubmit a petition within 60  
47           days of the order rejecting the earlier petition. A party to the  
48           Commission proceeding may petition the Commission for  
49           reconsideration of the financing order within five days after the  
50           date of its issuance.

- 1                    b. A financing order issued by the Commission to a public utility shall  
2                    include all of the following elements:
- 3                    1. Except for changes made pursuant to the formula-based  
4                    mechanism authorized under this section, the amount of energy  
5                    transition costs to be financed using energy transition bonds.  
6                    The Commission shall describe and estimate the amount of  
7                    financing costs that shall be recovered through energy  
8                    transition charges and specify the period over which energy  
9                    transition costs and financing costs shall be recovered.
- 10                  2. A finding that the proposed issuance of energy transition bonds  
11                  and the imposition and collection of an energy transition  
12                  charge are expected to provide quantifiable benefits to  
13                  customers as compared to the cost, that would have been  
14                  incurred absent the issuance of energy transition bonds.
- 15                  3. A finding that the structuring and pricing of the energy  
16                  transition bonds are reasonably expected to result in the lowest  
17                  energy transition charges consistent with market conditions at  
18                  the time the energy transition bonds are priced and the terms  
19                  set forth in such financing order.
- 20                  4. A requirement that, for so long as the energy transition bonds  
21                  are outstanding and until all financing costs have been paid in  
22                  full, the imposition and collection of energy transition charges  
23                  authorized under a financing order shall be nonbypassable and  
24                  paid by all existing and future retail customers receiving  
25                  transmission or distribution service, or both, from the public  
26                  utility or its successors or assignees under  
27                  Commission-approved rate schedules or under special  
28                  contracts, even if a customer elects to purchase electricity from  
29                  an alternative electric supplier following a fundamental change  
30                  in regulation of public utilities in this State.
- 31                  5. A formula-based true-up mechanism for making, at least  
32                  annually, expeditious periodic adjustments in the energy  
33                  transition charges that customers are required to pay pursuant  
34                  to the financing order and for making any adjustments that are  
35                  necessary to correct for any overcollection or undercollection  
36                  of the charges or to otherwise ensure the timely payment of  
37                  energy transition bonds and financing costs and other required  
38                  amounts and charges payable in connection with the energy  
39                  transition bonds.
- 40                  6. The energy transition property that is, or shall be, created in  
41                  favor of a public utility or its successors or assignees and that  
42                  shall be used to pay or secure energy transition bonds and all  
43                  financing costs.
- 44                  7. The degree of flexibility to be afforded to the public utility in  
45                  establishing the terms and conditions of the energy transition  
46                  bonds, including, but not limited to, repayment schedules,  
47                  expected interest rates, and other financing costs.
- 48                  8. How energy transition charges will be allocated among  
49                  customer classes.
- 50                  9. A requirement that, after the final terms of an issuance of energy  
51                  transition bonds have been established and before the issuance

- 1 of energy transition bonds, the public utility determines the  
2 resulting initial energy transition charge in accordance with the  
3 financing order and that such initial energy transition charge  
4 be final and effective upon the issuance of such energy  
5 transition bonds without further Commission action so long as  
6 the energy transition charge is consistent with the financing  
7 order.
- 8 10. A requirement that the public utility, simultaneously with the  
9 inception of the collection of energy transition charges, reduce  
10 its rates through a reduction in base rates or by a negative rider  
11 on customer bills in an amount equal to the revenue  
12 requirement in customer rates associated with the utility assets  
13 being financed by energy transition bonds. The public utility  
14 shall propose the method to reduce its rates in accordance with  
15 this sub-sub-subdivision in its petition.
- 16 11. A method of tracing funds collected as energy transition  
17 charges, or other proceeds of energy transition property, and  
18 determine that such method shall be deemed the method of  
19 tracing such funds and determining the identifiable cash  
20 proceeds of any energy transition property subject to a  
21 financing order under applicable law.
- 22 12. Establishment of a bond team consisting of representatives of  
23 the public utility and its consultant, the Public Staff and its  
24 consultant, and the Commission with a designated  
25 Commissioner and the Commission's consultant and counsel.
- 26 13. A direction for the bond team to work together and make all  
27 decisions as to the structuring, marketing, and pricing of the  
28 energy transition bonds; the selection of the underwriters; and  
29 the approval of the transaction documents. The Commission  
30 shall have final decision-making authority on all matters  
31 considered by the bond team.
- 32 14. Any other conditions not otherwise inconsistent with this  
33 section that the Commission determines are appropriate.
- 34 c. A financing order issued to a public utility may provide that creation  
35 of the public utility's energy transition property is conditioned upon,  
36 and simultaneous with, the sale or other transfer of the energy  
37 transition property to an assignee and the pledge of the energy  
38 transition property to secure energy transition bonds.
- 39 d. If the Commission issues a financing order, the public utility shall file  
40 with the Commission at least annually a petition or a letter applying  
41 the formula-based mechanism and, based on estimates of consumption  
42 for each rate class and other mathematical factors, requesting  
43 administrative approval to make the applicable adjustments. The  
44 review of the filing shall be limited to determining whether there are  
45 any mathematical or clerical errors in the application of the  
46 formula-based mechanism relating to the appropriate amount of any  
47 overcollection or undercollection of energy transition charges and the  
48 amount of an adjustment. The adjustments shall ensure the recovery  
49 of revenues sufficient to provide for the payment of principal, interest,  
50 acquisition, defeasance, financing costs, or redemption premium and  
51 other fees, costs, and charges in respect of energy transition bonds

1 approved under the financing order. Within 30 days after receiving a  
2 public utility's request pursuant to this paragraph, the Commission  
3 shall either approve the request or inform the public utility of any  
4 mathematical or clerical errors in its calculation. If the Commission  
5 informs the utility of mathematical or clerical errors in its calculation,  
6 the utility may correct its error and refile its request. The time frames  
7 previously described in this paragraph shall apply to a refiled request.

8 e. Subsequent to the transfer of energy transition property to an assignee  
9 or the issuance of energy transition bonds authorized thereby,  
10 whichever is earlier, a financing order is irrevocable and, except for  
11 changes made pursuant to the formula-based mechanism authorized in  
12 this section, the Commission may not amend, modify, or terminate the  
13 financing order by any subsequent action or reduce, impair, postpone,  
14 terminate, or otherwise adjust energy transition charges approved in  
15 the financing order. After the issuance of a financing order, the public  
16 utility retains sole discretion regarding whether to assign, sell, or  
17 otherwise transfer energy transition property.

18 (4) At the request of a public utility, the Commission may commence a  
19 proceeding and issue a subsequent financing order that provides for  
20 refinancing, retiring, or refunding the energy transition bonds issued pursuant  
21 to the original financing order if the Commission finds that the subsequent  
22 financing order satisfies all of the criteria specified in this section for a  
23 financing order. Effective upon retirement of the refunded energy transition  
24 bonds and the issuance of new energy transition bonds, the Commission shall  
25 adjust the related energy transition charges accordingly.

26 (5) Within 60 days after the Commission issues a financing order or a decision  
27 denying a request for reconsideration or, if the request for reconsideration is  
28 granted, within 30 days after the Commission issues its decision on  
29 reconsideration, an adversely affected party may petition for judicial review  
30 in the Supreme Court of North Carolina. Review on appeal shall be based  
31 solely on the record before the Commission and briefs to the court and is  
32 limited to determining whether the financing order, or the order on  
33 reconsideration, conforms to the State Constitution and State and federal law  
34 and is within the authority of the Commission under this section.

35 (6) Duration of financing order. –

36 a. A financing order remains in effect and energy transition property  
37 under the financing order continues to exist until energy transition  
38 bonds issued pursuant to the financing order have been paid in full or  
39 defeased and, in each case, all Commission-approved financing costs  
40 of such energy transition bonds have been recovered in full.

41 b. A financing order issued to a public utility remains in effect and  
42 unabated notwithstanding the reorganization, bankruptcy or other  
43 insolvency proceedings, merger, or sale of the public utility or its  
44 successors or assignees.

45 (c) Exception to Commission Jurisdiction. – The Commission may not, in exercising its  
46 powers and carrying out its duties regarding any matter within its authority pursuant to this  
47 Chapter, consider the energy transition bonds issued pursuant to a financing order to be the debt  
48 of the public utility other than for federal income tax purposes, consider the energy transition  
49 charges paid under the financing order to be the revenue of the public utility for any purpose, or  
50 consider the energy transition costs or financing costs specified in the financing order to be the

1 costs of the public utility, nor may the Commission determine any action taken by a public utility  
2 which is consistent with the financing order to be unjust or unreasonable.

3 (d) Public Utility Duties. – The electric bills of a public utility that has obtained a  
4 financing order and caused energy transition bonds to be issued must comply with the provisions  
5 of this subsection; however, the failure of a public utility to comply with this subsection does not  
6 invalidate, impair, or affect any financing order, energy transition property, energy transition  
7 charge, or energy transition bonds. The public utility must do all of the following:

8 (1) Explicitly reflect that a portion of the charges on such bill represents energy  
9 transition charges approved in a financing order issued to the public utility and,  
10 if the energy transition property has been transferred to an assignee, must  
11 include a statement to the effect that the assignee is the owner of the rights to  
12 energy transition charges and that the public utility or other entity, if  
13 applicable, is acting as a collection agent or servicer for the assignee. The tariff  
14 applicable to customers must indicate the energy transition charge and the  
15 ownership of the charge.

16 (2) Include the energy transition charge on each customer's bill as a separate line  
17 item and include both the rate and the amount of the charge on each bill.

18 (e) Energy transition Property. –

19 (1) Provisions applicable to energy transition property. –

20 a. All energy transition property that is specified in a financing order  
21 constitutes an existing, present intangible property right or interest  
22 therein, notwithstanding that the imposition and collection of energy  
23 transition charges depends on the public utility, to which the financing  
24 order is issued, performing its servicing functions relating to the  
25 collection of energy transition charges and on future electricity  
26 consumption. The property exists (i) regardless of whether or not the  
27 revenues or proceeds arising from the property have been billed, have  
28 accrued, or have been collected and (ii) notwithstanding the fact that  
29 the value or amount of the property is dependent on the future  
30 provision of service to customers by the public utility or its successors  
31 or assignees and the future consumption of electricity by customers.

32 b. Energy transition property specified in a financing order exists until  
33 energy transition bonds issued pursuant to the financing order are paid  
34 in full and all financing costs and other costs of such energy transition  
35 bonds have been recovered in full.

36 c. All or any portion of energy transition property specified in a financing  
37 order issued to a public utility may be transferred, sold, conveyed, or  
38 assigned to a successor or assignee that is wholly owned, directly or  
39 indirectly, by the public utility and created for the limited purpose of  
40 acquiring, owning, or administering energy transition property or  
41 issuing energy transition bonds under the financing order. All or any  
42 portion of energy transition property may be pledged to secure energy  
43 transition bonds issued pursuant to the financing order, amounts  
44 payable to financing parties and to counterparties under any ancillary  
45 agreements, and other financing costs. Any transfer, sale, conveyance,  
46 assignment, grant of a security interest in or pledge of energy transition  
47 property by a public utility, or an affiliate of the public utility, to an  
48 assignee, to the extent previously authorized in a financing order, does  
49 not require the prior consent and approval of the Commission.

50 d. If a public utility defaults on any required payment of charges arising  
51 from energy transition property specified in a financing order, a court,

1 upon application by an interested party, and without limiting any other  
2 remedies available to the applying party, shall order the sequestration  
3 and payment of the revenues arising from the energy transition  
4 property to the financing parties or their assignees. Any such financing  
5 order remains in full force and effect notwithstanding any  
6 reorganization, bankruptcy, or other insolvency proceedings with  
7 respect to the public utility or its successors or assignees.

8 e. The interest of a transferee, purchaser, acquirer, assignee, or pledgee  
9 in energy transition property specified in a financing order issued to a  
10 public utility, and in the revenue and collections arising from that  
11 property, is not subject to setoff, counterclaim, surcharge, or defense  
12 by the public utility or any other person or in connection with the  
13 reorganization, bankruptcy, or other insolvency of the public utility or  
14 any other entity.

15 f. Any successor to a public utility, whether pursuant to any  
16 reorganization, bankruptcy, or other insolvency proceeding or whether  
17 pursuant to any merger or acquisition, sale, or other business  
18 combination, or transfer by operation of law, as a result of public  
19 utility restructuring or otherwise, must perform and satisfy all  
20 obligations of, and have the same rights under a financing order as, the  
21 public utility under the financing order in the same manner and to the  
22 same extent as the public utility, including collecting and paying to the  
23 person entitled to receive the revenues, collections, payments, or  
24 proceeds of the energy transition property. Nothing in this  
25 sub-subdivision is intended to limit or impair any authority of the  
26 Commission concerning the transfer or succession of interests of  
27 public utilities.

28 g. Energy transition bonds shall be nonrecourse to the credit or any assets  
29 of the public utility other than the energy transition property as  
30 specified in the financing order and any rights under any ancillary  
31 agreement.

32 (2) Provisions applicable to security interests. –

33 a. The creation, perfection, and enforcement of any security interest in  
34 energy transition property to secure the repayment of the principal and  
35 interest and other amounts payable in respect of energy transition  
36 bonds; amounts payable under any ancillary agreement and other  
37 financing costs are governed by this subsection and not by the  
38 provisions of the Code.

39 b. A security interest in energy transition property is created, valid, and  
40 binding and perfected at the later of the time: (i) the financing order is  
41 issued, (ii) a security agreement is executed and delivered by the  
42 debtor granting such security interest, (iii) the debtor has rights in such  
43 energy transition property or the power to transfer rights in such  
44 energy transition property, or (iv) value is received for the energy  
45 transition property. The description of energy transition property in a  
46 security agreement is sufficient if the description refers to this section  
47 and the financing order creating the energy transition property.

48 c. A security interest shall attach without any physical delivery of  
49 collateral or other act, and, upon the filing of a financing statement  
50 with the office of the Secretary of State, the lien of the security interest  
51 shall be valid, binding, and perfected against all parties having claims

1 of any kind in tort, contract, or otherwise against the person granting  
2 the security interest, regardless of whether the parties have notice of  
3 the lien. Also upon this filing, a transfer of an interest in the energy  
4 transition property shall be perfected against all parties having claims  
5 of any kind, including any judicial lien or other lien creditors or any  
6 claims of the seller or creditors of the seller, and shall have priority  
7 over all competing claims other than any prior security interest,  
8 ownership interest, or assignment in the property previously perfected  
9 in accordance with this section.

10 d. The Secretary of State shall maintain any financing statement filed to  
11 perfect any security interest under this section in the same manner that  
12 the Secretary maintains financing statements filed by transmitting  
13 utilities under the Code. The filing of a financing statement under this  
14 section shall be governed by the provisions regarding the filing of  
15 financing statements in the Code.

16 e. The priority of a security interest in energy transition property is not  
17 affected by the commingling of energy transition charges with other  
18 amounts. Any pledgee or secured party shall have a perfected security  
19 interest in the amount of all energy transition charges that are  
20 deposited in any cash or deposit account of the qualifying utility in  
21 which energy transition charges have been commingled with other  
22 funds and any other security interest that may apply to those funds shall  
23 be terminated when they are transferred to a segregated account for the  
24 assignee or a financing party.

25 f. No application of the formula-based adjustment mechanism as  
26 provided in this section will affect the validity, perfection, or priority  
27 of a security interest in or transfer of energy transition property.

28 g. If a default or termination occurs under the energy transition bonds,  
29 the financing parties or their representatives may foreclose on or  
30 otherwise enforce their lien and security interest in any energy  
31 transition property as if they were secured parties with a perfected and  
32 prior lien under the Code, and the Commission may order amounts  
33 arising from energy transition charges be transferred to a separate  
34 account for the financing parties' benefit, to which their lien and  
35 security interest shall apply. On application by or on behalf of the  
36 financing parties, the Superior Court of Wake County shall order the  
37 sequestration and payment to them of revenues arising from the energy  
38 transition charges.

39 (3) Provisions applicable to the sale, assignment, or transfer of energy transition  
40 property. –

41 a. Any sale, assignment, or other transfer of energy transition property  
42 shall be an absolute transfer and true sale of, and not a pledge of or  
43 secured transaction relating to, the seller's right, title, and interest in,  
44 to, and under the energy transition property if the documents  
45 governing the transaction expressly state that the transaction is a sale  
46 or other absolute transfer other than for federal and State income tax  
47 purposes. For all purposes other than federal and State income tax  
48 purposes, the parties' characterization of a transaction as a sale of an  
49 interest in energy transition property shall be conclusive that the  
50 transaction is a true sale and that ownership has passed to the party  
51 characterized as the purchaser, regardless of whether the purchaser

1 has possession of any documents evidencing or pertaining to the  
2 interest. A transfer of an interest in energy transition property may be  
3 created only when all of the following have occurred: (i) the financing  
4 order creating the energy transition property has become effective, (ii)  
5 the documents evidencing the transfer of energy transition property  
6 have been executed by the assignor and delivered to the assignee, and  
7 (iii) value is received for the energy transition property. After such a  
8 transaction, the energy transition property is not subject to any claims  
9 of the transferor or the transferor's creditors, other than creditors  
10 holding a prior security interest in the energy transition property  
11 perfected in accordance with subdivision (2) of this subsection.

12 b. The characterization of the sale, assignment, or other transfer as an  
13 absolute transfer and true sale and the corresponding characterization  
14 of the property interest of the purchaser, shall not be affected or  
15 impaired by the occurrence of any of the following factors:

- 16 1. Commingling of energy transition charges with other amounts.
- 17 2. The retention by the seller of (i) a partial or residual interest,  
18 including an equity interest, in the energy transition property,  
19 whether direct or indirect, or whether subordinate or otherwise,  
20 or (ii) the right to recover costs associated with taxes, franchise  
21 fees, or license fees imposed on the collection of energy  
22 transition charges.
- 23 3. Any recourse that the purchaser may have against the seller.
- 24 4. Any indemnification rights, obligations, or repurchase rights  
25 made or provided by the seller.
- 26 5. The obligation of the seller to collect energy transition charges  
27 on behalf of an assignee.
- 28 6. The transferor acting as the servicer of the energy transition  
29 charges or the existence of any contract that authorizes or  
30 requires the public utility, to the extent that any interest in  
31 energy transition property is sold or assigned, to contract with  
32 the assignee or any financing party that it will continue to  
33 operate its system to provide service to its customers, will  
34 collect amounts in respect of the energy transition charges for  
35 the benefit and account of such assignee or financing party, and  
36 will account for and remit such amounts to or for the account  
37 of such assignee or financing party.
- 38 7. The treatment of the sale, conveyance, assignment, or other  
39 transfer for tax, financial reporting, or other purposes.
- 40 8. The granting or providing to bondholders a preferred right to  
41 the energy transition property or credit enhancement by the  
42 public utility or its affiliates with respect to such energy  
43 transition bonds.
- 44 9. Any application of the formula-based adjustment mechanism  
45 as provided in this section.

46 c. Any right that a public utility has in the energy transition property  
47 before its pledge, sale, or transfer or any other right created under this  
48 section or created in the financing order and assignable under this  
49 section or assignable pursuant to a financing order is property in the  
50 form of a contract right or a chose in action. Transfer of an interest in  
51 energy transition property to an assignee is enforceable only upon the

1 later of (i) the issuance of a financing order, (ii) the assignor having  
2 rights in such energy transition property or the power to transfer rights  
3 in such energy transition property to an assignee, (iii) the execution and  
4 delivery by the assignor of transfer documents in connection with the  
5 issuance of energy transition bonds, and (iv) the receipt of value for  
6 the energy transition property. An enforceable transfer of an interest  
7 in energy transition property to an assignee is perfected against all  
8 third parties, including subsequent judicial or other lien creditors,  
9 when a notice of that transfer has been given by the filing of a  
10 financing statement in accordance with sub-subdivision c. of  
11 subdivision (2) of this subsection. The transfer is perfected against  
12 third parties as of the date of filing.

13 d. The Secretary of State shall maintain any financing statement filed to  
14 perfect any sale, assignment, or transfer of energy transition property  
15 under this section in the same manner that the Secretary maintains  
16 financing statements filed by transmitting utilities under the Code. The  
17 filing of any financing statement under this section shall be governed  
18 by the provisions regarding the filing of financing statements in the  
19 Code. The filing of such a financing statement is the only method of  
20 perfecting a transfer of energy transition property.

21 e. The priority of a transfer perfected under this section is not impaired  
22 by any later modification of the financing order or energy transition  
23 property or by the commingling of funds arising from energy transition  
24 property with other funds. Any other security interest that may apply  
25 to those funds, other than a security interest perfected under  
26 subdivision (2) of this subsection, is terminated when they are  
27 transferred to a segregated account for the assignee or a financing  
28 party. If energy transition property has been transferred to an assignee  
29 or financing party, any proceeds of that property must be held in trust  
30 for the assignee or financing party.

31 f. The priority of the conflicting interests of assignees in the same  
32 interest or rights in any energy transition property is determined as  
33 follows:

- 34 1. Conflicting perfected interests or rights of assignees rank  
35 according to priority in time of perfection. Priority dates from  
36 the time a filing covering the transfer is made in accordance  
37 with sub-subdivision c. of subdivision (2) of this subsection.
- 38 2. A perfected interest or right of an assignee has priority over a  
39 conflicting unperfected interest or right of an assignee.
- 40 3. A perfected interest or right of an assignee has priority over a  
41 person who becomes a lien creditor after the perfection of such  
42 assignee's interest or right.

43 (f) Description or Indication of Property. – The description of energy transition property  
44 being transferred to an assignee in any sale agreement, purchase agreement, or other transfer  
45 agreement, granted or pledged to a pledgee in any security agreement, pledge agreement, or other  
46 security document, or indicated in any financing statement is only sufficient if such description  
47 or indication refers to the financing order that created the energy transition property and states  
48 that the agreement or financing statement covers all or part of the property described in the  
49 financing order. This section applies to all purported transfers of, and all purported grants or liens  
50 or security interests in, energy transition property, regardless of whether the related sale

1 agreement, purchase agreement, other transfer agreement, security agreement, pledge agreement,  
2 or other security document was entered into, or any financing statement was filed.

3 (g) Financing Statements. – All financing statements referenced in this section are subject  
4 to Part 5 of Article 9 of the Code, except that the requirement as to continuation statement does  
5 not apply.

6 (h) Choice of Law. – The law governing the validity, enforceability, attachment,  
7 perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or  
8 the pledge or creation of a security interest in any energy transition property shall be the laws of  
9 this State.

10 (i) Energy transition Bonds Not Public Debt. – Neither the State nor its political  
11 subdivisions are liable on any energy transition bonds, and the bonds are not a debt or a general  
12 obligation of the State or any of its political subdivisions, agencies, or instrumentalities, nor are  
13 they special obligations or indebtedness of the State or any agency or political subdivision. An  
14 issue of energy transition bonds does not, directly, indirectly, or contingently, obligate the State  
15 or any agency, political subdivision, or instrumentality of the State to levy any tax or make any  
16 appropriation for payment of the energy transition bonds, other than in their capacity as consumers  
17 of electricity. All energy transition bonds must contain on the face thereof a statement to the  
18 following effect: "Neither the full faith and credit nor the taxing power of the State of North  
19 Carolina is pledged to the payment of the principal of, or interest on, this bond."

20 (j) Legal Investment. – All of the following entities may legally invest any sinking funds,  
21 moneys, or other funds in energy transition bonds:

22 (1) Subject to applicable statutory restrictions on State or local investment  
23 authority, the State, units of local government, political subdivisions, public  
24 bodies, and public officers, except for members of the Commission.

25 (2) Banks and bankers, savings and loan associations, credit unions, trust  
26 companies, savings banks and institutions, investment companies, insurance  
27 companies, insurance associations, and other persons carrying on a banking  
28 or insurance business.

29 (3) Personal representatives, guardians, trustees, and other fiduciaries.

30 (4) All other persons authorized to invest in bonds or other obligations of a similar  
31 nature.

32 (k) Obligation of Nonimpairment. –

33 (1) The State and its agencies, including the Commission, pledge and agree with  
34 bondholders, the owners of the energy transition property, and other financing  
35 parties that the State and its agencies will not take any action listed in this  
36 subdivision. This paragraph does not preclude limitation or alteration if full  
37 compensation is made by law for the full protection of the energy transition  
38 charges collected pursuant to a financing order and of the bondholders and  
39 any assignee or financing party entering into a contract with the public utility.  
40 The prohibited actions are as follows:

41 a. Alter the provisions of this section, which authorize the Commission  
42 to create an irrevocable contract right or chose in action by the  
43 issuance of a financing order, to create energy transition property, and  
44 make the energy transition charges imposed by a financing order  
45 irrevocable, binding, or nonbypassable charges.

46 b. Take or permit any action that impairs or would impair the value of  
47 energy transition property or the security for the energy transition  
48 bonds or revises the energy transition costs for which recovery is  
49 authorized.

50 c. In any way impair the rights and remedies of the bondholders,  
51 assignees, and other financing parties.

d. Except for changes made pursuant to the formula-based adjustment mechanism authorized under this section, reduce, alter, or impair energy transition charges that are to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related energy transition bonds have been paid and performed in full.

(2) Any person or entity that issues energy transition bonds may include the language specified in this subsection in the energy transition bonds and related documentation.

(l) Not a Public Utility. – An assignee or financing party is not a public utility or person providing electric service by virtue of engaging in the transactions described in this section.

(m) Conflicts. – If there is a conflict between this section and any other law regarding the attachment, assignment, or perfection, or the effect of perfection, or priority of, assignment or transfer of, or security interest in energy transition property, this section shall govern.

(n) Consultation. – In making determinations under this section, the Commission or public staff or both may engage an outside consultant and counsel.

(o) Effect of Invalidity. – If any provision of this section is held invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity of any action allowed under this section which is taken by a public utility, an assignee, a financing party, a collection agent, or a party to an ancillary agreement; and any such action remains in full force and effect with respect to all energy transition bonds issued or authorized in a financing order issued under this section before the date that such provision is held invalid or is invalidated, superseded, replaced, or repealed, or expires for any reason."

**SECTION 2.(b)** G.S. 25-9-109 reads as rewritten:

"§ 25-9-109. **Scope.**

(a) General scope of Article. – Except as otherwise provided in subsections (c) and (d) of this section, this Article applies to all of the following:

- (1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by ~~contract~~;contract.
- (2) An agricultural ~~lien~~;lien.
- (3) A sale of accounts, chattel paper, payment intangibles, or promissory ~~notes~~;notes.
- (4) A ~~consignment~~;consignment.
- (5) A security interest arising under G.S. 25-2-401, 25-2-505, 25-2-711(3), or 25-2A-508(5), as provided in G.S. ~~25-9-110~~; and25-9-110.
- (6) A security interest arising under G.S. 25-4-208 or G.S. 25-5-118.

(b) Security interest in secured obligation. – The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply.

(c) Extent to which Article does not apply. – This Article does not apply to the extent ~~that~~that any one or more of the following conditions are met:

- (1) A statute, regulation, or treaty of the United States preempts this ~~Article~~;Article.
- (2) Repealed by Session Laws 2001-218, s. 2, effective July 1, 2001.
- (3) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental ~~unit~~; orunit.

- 1 (4) The rights of a transferee beneficiary or nominated person under a letter of  
2 credit are independent and superior under G.S. 25-5-114.
- 3 (d) Inapplicability of Article. – This Article does not apply ~~to~~ to any of the following:
- 4 (1) A landlord's lien, other than an agricultural ~~lien;~~ lien.
- 5 (2) A lien, other than an agricultural lien, given by statute or other rule of law for  
6 services or materials, but G.S. 25-9-333 applies with respect to priority of the  
7 ~~lien;~~ lien.
- 8 (3) An assignment of a claim for wages, salary, or other compensation of an  
9 ~~employee;~~ employee.
- 10 (4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as  
11 part of a sale of the business out of which they ~~arose;~~ arose.
- 12 (5) An assignment of accounts, chattel paper, payment intangibles, or promissory  
13 notes which is for the purpose of collection ~~only;~~ only.
- 14 (6) An assignment of a right to payment under a contract to an assignee that is  
15 also obligated to perform under the ~~contract;~~ contract.
- 16 (7) An assignment of a single account, payment intangible, or promissory note to  
17 an assignee in full or partial satisfaction of a preexisting  
18 ~~indebtedness;~~ indebtedness.
- 19 (8) A transfer of an interest in or an assignment of a claim under a policy of  
20 insurance, other than an assignment by or to a health-care provider of a  
21 health-care-insurance receivable and any subsequent assignment of the right  
22 to payment, but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to  
23 proceeds and priorities in ~~proceeds;~~ proceeds.
- 24 (9) An assignment of a right represented by a judgment, other than a judgment  
25 taken on a right to payment that was ~~collateral;~~ collateral.
- 26 (10) A right of recoupment or setoff, ~~but;~~ but (i) G.S.
- 27 a. ~~G.S.~~ G.S. 25-9-340 applies with respect to the effectiveness of rights of  
28 recoupment or setoff against deposit ~~accounts;~~ and accounts and (ii)  
29 G.S.
- 30 b. ~~G.S.~~ G.S. 25-9-404 applies with respect to defenses or claims of an account  
31 ~~debtor;~~ debtor.
- 32 (11) The creation or transfer of an interest in or lien on real property, including a  
33 lease or rents thereunder, except to the extent that provision is made ~~for;~~ for  
34 the following:
- 35 a. Liens on real property in G.S. 25-9-203 and G.S. ~~25-9-308;~~ 25-9-308.
- 36 b. Fixtures in G.S. ~~25-9-334;~~ 25-9-334.
- 37 c. Fixture filings in G.S. 25-9-501, 25-9-502, 25-9-512, 25-9-516, and  
38 ~~25-9-519;~~ and 25-9-519.
- 39 d. Security agreements covering personal and real property in  
40 G.S. ~~25-9-604;~~ 25-9-604.
- 41 (12) An assignment of a claim arising in tort, other than a commercial tort claim,  
42 but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and  
43 priorities in ~~proceeds;~~ proceeds.
- 44 (13) An assignment of a deposit account in a consumer transaction, but  
45 G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and priorities  
46 in ~~proceeds;~~ proceeds.
- 47 (14) The creation, perfection, priority, or enforcement of any lien on, assignment  
48 of, pledge of, or security in, any revenues, rights, funds, or other tangible or  
49 intangible assets created, made, or granted by this State or a governmental unit  
50 in this State, including the assignment of rights as secured party in security  
51 interests granted by any party subject to the provisions of this Article to this

1 State or a governmental unit in this State, to secure, directly or indirectly, any  
2 bond, note, other evidence of indebtedness, or other payment obligations for  
3 borrowed money issued by, or in connection with, installment or lease  
4 purchase financings by, this State or a governmental unit in this State.  
5 However, notwithstanding this subdivision, this Article does apply to the  
6 creation, perfection, priority, and enforcement of security interests created by  
7 this State or a governmental unit in this State in equipment or ~~fixtures~~;  
8 ~~or fixtures.~~

9 (15) The creation, perfection, priority, or enforcement of any sale, assignment of,  
10 pledge of, security interest in, or other transfer of, any interest or right or  
11 portion of any interest or right in any storm recovery property as defined in  
12 G.S. 62-172.

13 (16) The creation, perfection, priority, or enforcement of any sale, assignment of,  
14 pledge of, security interest in, or other transfer of, any interest or right or  
15 portion of any interest or right in any energy transition property as defined in  
16 G.S. 62-173."

17 **SECTION 2.(c)** This section is effective when it becomes law.  
18

## 19 **ADVANCED NUCLEAR EARLY SITE PERMIT AND SUBSEQUENT LICENSE** 20 **RENEWAL**

21 **SECTION 3.(a)** In order to support a diverse portfolio of advanced energy  
22 technologies, reduce future permitting and siting costs, and promote the development of  
23 advanced nuclear energy, the electric public utilities operating in this State may jointly or  
24 separately incur costs up to an aggregate total of fifty million dollars (\$50,000,000) to pursue an  
25 Early Site Permit ("ESP") from the Nuclear Regulatory Commission **for siting of an advanced**  
26 **nuclear facility at a single location in the State.** The electric public utilities shall make reasonable  
27 efforts to obtain any funding available from any federal agencies in order to offset such costs,  
28 and any such funding obtained from a federal agency shall be utilized to offset the costs incurred.  
29 Each participating electric public utility may establish a regulatory asset and defer to such  
30 regulatory asset the incremental costs incurred in connection with its pursuit of an ESP, along  
31 with associated carrying costs based on the utility's then-authorized, net-of-tax, weighted average  
32 cost of capital, until such time as the costs can be reflected in customer rates. In a future general  
33 rate proceeding, the Commission shall establish an amortization period for recovery, and allow  
34 a return on the unamortized balance at the utility's then authorized, net-of-tax, weighted average  
35 cost of capital. This section shall not be construed to provide any legislative endorsement for the  
36 selection of nuclear resources in future electric public utility integrated resource plans, which  
37 shall be reviewed by the Commission in accordance with then-applicable laws and regulations.

38 **SECTION 3.(b)** In order to support the continued operation of high capacity factor,  
39 low-cost, and emissions free nuclear electric generation, the electric public utilities are directed  
40 to prepare and submit Subsequent License Renewal applications with the Nuclear Regulatory  
41 Commission for each of the six currently operating nuclear electric generating facility sites in the  
42 electric public utilities' balancing area authority. The electric public utilities shall report on the  
43 status of the Subsequent License Renewal applications in their integrated resource plan filings.

44 **SECTION 3.(c)** This section is effective when it becomes law.  
45

## 47 **PART II. RATEMAKING MODERNIZATION/AUTHORIZE PERFORMANCE** 48 **BASED REGULATION OF ELECTRIC PUBLIC UTILITIES**

49  
50 The General Assembly of North Carolina enacts:

1           **SECTION 4.(a)** Article 7 of Chapter 62 of the General Statutes is amended by  
2 adding a new section to read:

3 **"§ 62-133.16. Performance-Based Regulation Authorized.**

4       (a) Definitions. – For purposes of this section, the following definitions apply:

- 5           (1) "Cost causation principle" means establishment of a causal link between a  
6 specific customer class, how that class uses the electric system, and costs  
7 incurred by the electric public utility for the provision of electric service.
- 8           (2) "Decoupling ratemaking mechanism" means a ratemaking mechanism  
9 intended to break the link between an electric public utility's revenue and the  
10 level of consumption of electricity on a per customer basis by its residential  
11 customers.
- 12           (3) "Distributed energy resource" or "DER" means a device or measure that  
13 produces electricity or reduces electricity consumption, and is connected to  
14 the electric distribution system, either on the customer's premises, or on the  
15 electric public utility's primary distribution system. A DER may include any  
16 of the following: energy efficiency, distributed generation, demand response,  
17 microgrids, energy storage, energy management systems, and electric  
18 vehicles.
- 19           (4) "Earnings sharing mechanism" means an annual ratemaking mechanism that  
20 shares surplus earnings between the electric public utility and customers over  
21 the period of time covered by a MYRP and any further period of time pursuant  
22 authorized pursuant to subdivision (1)e. of subsection (d) of this section.
- 23           (4) "Multi-year rate plan" or "MYRP" means a ratemaking mechanism under  
24 which the Commission sets base rates for a multi-year period that includes  
25 authorized periodic changes in base rates without the need for the electric  
26 public utility to file a subsequent general rate application pursuant to  
27 G.S. 62-133, along with an earnings sharing mechanism.
- 28           (5) "Performance incentive mechanism" or "PIM" means a ratemaking  
29 mechanism that links electric public utility revenue or earnings to electric  
30 public utility performance in targeted areas consistent with policy goals, as  
31 that term is defined by this section, approved by the Commission, and includes  
32 specific performance metrics and targets against which electric public utility  
33 performance is measured.
- 34           (6) "Performance-based regulation" or "PBR" means an alternative ratemaking  
35 approach that includes decoupling, one or more performance incentive  
36 mechanisms, and a multi-year rate plan, including an earnings sharing  
37 mechanism, or such other alternative regulatory mechanisms as may be  
38 proposed by an electric public utility.
- 39           (7) "Policy goal" means the expected or anticipated achievement of operational  
40 efficiency, cost savings, or reliability of electric service that is greater than  
41 that which already is required by State or federal law or regulation, including  
42 standards the Commission has established by order prior to and independent  
43 of a PBR application; provided that, with respect to environmental standards,  
44 the Commission may not approve a policy goal that is more stringent than is  
45 established (i) by State law, (ii) by federal law, (iii) by the Environmental  
46 Management Commission pursuant to G.S. 143B-282, or (iv) by the United  
47 States Environmental Protection Agency.
- 48           (8) "Rate year" means the year of the MYRP for which base rates are effective.
- 49           (9) "Tracking metric" means a methodology for tracking and quantitatively  
50 measuring and monitoring outcomes or electric public utility performance.
- 51

1        (b) Performance-based regulation authorized. – In addition to the method for fixing base  
2 rates established under G.S. § 62- 133, the Commission is authorized to approve  
3 performance-based regulation upon application of an electric public utility pursuant to the  
4 process and requirements of this section, so long as the Commission allocates the electric public  
5 utility's total revenue requirement among customer classes based upon the cost causation  
6 principle, including the use of minimum system methodology by an electric public utility for the  
7 purpose of allocating distribution costs between customer classes, and inter-class subsidization  
8 of ratepayers is minimized to the greatest extent practicable by the conclusion of the MYRP  
9 period. This section shall not be construed to require the Commission to use the minimum system  
10 methodology for the purpose of classifying costs within a customer class when setting a basic  
11 facilities charge.

12        (c) Application. – An electric public utility shall be permitted to submit a PBR  
13 application in a general rate case proceeding initiated pursuant to G.S. 62-133. A PBR application  
14 shall include a decoupling ratemaking mechanism, one or more PIMs, and a MYRP, including  
15 both an earnings sharing mechanism and proposed revenue requirements and base rates for each  
16 of the years that a MYRP is in effect or a method for calculating the same. The PBR application  
17 may also include proposed tracking metrics with or without targets or benchmarks to measure  
18 electric public utility achievement. The following additional requirements apply to a PBR  
19 application:

20            (1) The following shall apply to a MYRP:

21            a. The base rates for the first rate year of a MYRP shall be fixed in the  
22 manner prescribed under G.S. 62-133, including actual changes in  
23 costs, revenues or the cost of the electric public utility's property used  
24 and useful, or to be used and useful within a reasonable time after the  
25 test period, plus costs associated with a known and measurable set of  
26 capital investments, net of operating benefits, associated with a set of  
27 discrete and identifiable capital spending projects to be placed in  
28 service during the first rate year. Subsequent changes in base rates in  
29 the second and third rate years of the MYRP shall be based on  
30 projected incremental Commission-authorized capital investments  
31 that will be used and useful during the rate year and associated  
32 expenses, net of operating benefits, including operation and  
33 maintenance savings, and depreciation of rate base associated with the  
34 capital investments, that are incurred or realized during each rate year  
35 of the MYRP period; provided that the amount of increase in the  
36 second rate year under the MYRP shall not exceed 4% of the electric  
37 public utility's North Carolina retail jurisdictional revenue requirement  
38 that is used to fix rates during the first year of the MYRP pursuant to  
39 G.S. 62-133 excluding any revenue requirement for the capital  
40 spending projects to be placed in service during the first rate year. The  
41 amount of increase for the third rate year under the MYRP shall not  
42 exceed 4% of the electric public utility's North Carolina retail  
43 jurisdictional revenue requirement that is used to fix rates during the  
44 first year of the MYRP pursuant to G.S. 62-133, excluding any  
45 revenue requirement for the capital spending projects placed in service  
46 during the first rate year. The revenue requirements associated with  
47 any single new generation plant placed in service during the MYRP  
48 for which the total plant in service balance exceeds \$500 million shall  
49 not be included in a MYRP. Instead, the utility may request and the  
50 Commission may grant, if it deems appropriate, permission to  
51 establish a regulatory asset and defer to such regulatory asset

- 1 incremental costs related to such electric generation investments to be  
2 considered for recovery in a future rate proceeding. In setting the  
3 electric public utility's authorized rate of return on equity for an MYRP  
4 period, the Commission shall consider any increased or decreased risk  
5 to either the electric public utility or its ratepayers that may result from  
6 having an approved MYRP.
- 7 b. In a proceeding authorizing a MYRP, the Commission shall establish  
8 a rider to refund amounts related to the earnings sharing mechanism,  
9 and to refund or collect amounts related to PIM rewards or penalties,  
10 and decoupling adjustments.
- 11 c. Within 60 days of the conclusion of each rate year, the Commission  
12 shall establish a proceeding to:
- 13 1. Examine the earnings of the electric public utility during the  
14 rate year to determine if the earnings exceeded the authorized  
15 rate of return on equity determined by the Commission in the  
16 proceeding establishing the PBR. If the weather-normalized  
17 earnings exceed the authorized rate of return on equity plus 50  
18 basis points, the excess earnings above the authorized rate of  
19 return on equity plus 50 basis points will be refunded to  
20 customers in the rider established by the Commission. If the  
21 weather-normalized earnings fall below the authorized rate of  
22 return on equity, the electric public utility may file a rate case  
23 pursuant to G.S. 62-133. Any penalties or rewards from PIM  
24 incentives and any incentives related to demand-side  
25 management and energy efficiency measures pursuant to  
26 G.S. 62-133.9(f) will be excluded from the determination of  
27 any refund pursuant to earnings sharing mechanism.
- 28 2. Evaluate the performance of the electric public utility with  
29 respect to Commission approved PIMs applicable in the rate  
30 year. Any financial rewards shall be collected from customers  
31 and any penalties refunded to customers, in each case, through  
32 the rider established by the Commission.
- 33 3. Evaluate the decoupling ratemaking mechanism, and refund or  
34 collect, as applicable, a corresponding amount from residential  
35 customers through the rider established by the Commission.
- 36 (2) The proposed decoupling mechanism shall only be applied to residential  
37 customer classes. The Commission shall establish an annual revenue  
38 requirement per residential customer and an appropriate distribution of said  
39 revenue requirement per customer in each month of the year. The established  
40 monthly revenue requirements times the actual number of residential  
41 customers each month shall become the target revenue for the residential  
42 class. Each month, the electric public utility shall defer to a regulatory asset  
43 or liability account the difference between the actual revenue and the target  
44 revenue for the residential class. The changes in revenue requirements for the  
45 second and third rate years shall be allocated to the residential customer class  
46 and divided by the number of residential customers to determine the  
47 appropriate adjustment to the annual revenue requirement per residential  
48 customer that is used to establish the target revenues for the residential class  
49 in the second and third rate years of a MYRP. The electric public utility may  
50 exclude rate schedules or riders for electric vehicle charging, including EV  
51 charging during off-peak periods on time-of-use rates, from the decoupling

- 1                    mechanism to preserve the electric public utility's incentive to encourage  
2                    electric vehicle adoption.
- 3                    (3)                The policy goal targeted by a PIM shall be clearly defined, measurable with a  
4                    defined performance metric, and solely or primarily within the electric public  
5                    utility's control.
- 6                    (4)                Any PIM shall be structured to ensure that, pursuant to subdivisions (1) and  
7                    (2) of this subsection, any penalty shall be refunded to customers and any  
8                    reward shall be collected from customers and shall be limited such that the  
9                    total of all potential and actual PIM incentives or penalties does not exceed  
10                   1.0% of the electric public utility's total annual revenue requirement that is  
11                   used to fix rates during the first year of the MYRP pursuant to G.S. 62-133,  
12                   excluding any revenue requirement for the capital spending projects to be  
13                   placed in service during the first rate year, where the PIM is approved. Any  
14                   incentives related to demand-side management and energy efficiency  
15                   measures pursuant to G.S. 62-133.9(f) shall be excluded from the limits  
16                   established in this section and shall continue to be recovered through the  
17                   demand-side management and energy efficiency (DSM/EE) rider.
- 18                   (5)                Subject to the limitations set out in the preceding subdivision, any PIMs  
19                   proposed by an electric public utility shall include one or more of the  
20                   following:
- 21                   a.                Rewards based on the sharing of savings achieved by meeting or  
22                   exceeding a specific policy goal.
- 23                   b.                Rewards or penalties based on differentiated authorized rates of return  
24                   on common equity to encourage utility investments or operational  
25                   changes to meet a specific policy goal, which shall not be greater than  
26                   25 basis points.
- 27                   c.                Fixed financial rewards to encourage achievement of specific policy  
28                   goals, or fixed financial penalties for failure to achieve policy goals.
- 29                   (d)                Commission action on application.–
- 30                   (1)                The Commission shall approve a PBR application by an electric public utility  
31                   only upon a finding that a proposed PBR would result in just and reasonable  
32                   rates, is in the public interest, and is consistent with the criteria established in  
33                   this section and rules adopted thereunder. In reviewing any such PBR  
34                   application under this section, the Commission shall consider whether the  
35                   PBR application:
- 36                   a.                Assures that no customer or class of customers is unreasonably harmed  
37                   and that the rates are fair both to the electric public utility and to the  
38                   customer.
- 39                   b.                Reasonably assures the continuation of safe and reliable electric  
40                   service.
- 41                   c.                Will not unreasonably prejudice any class of electric customers and  
42                   result in sudden substantial rate increases or "rate shock" to customers.
- 43                   (2)                In reviewing any such PBR application under this section, the Commission  
44                   may consider whether the PBR application:
- 45                   a.                Encourages peak load reduction or efficient use of the system.
- 46                   b.                Encourages utility-scale renewable energy and storage.
- 47                   c.                Encourages DERs.
- 48                   d.                Reduces low-income energy burdens.
- 49                   e.                Encourages energy efficiency.
- 50                   f.                Encourages carbon reductions.
- 51                   g.                Encourages beneficial electrification, including electric vehicles.

- 1            h. Supports equity in contracting.
- 2            i. Promotes resilience and security of the electric grid.
- 3            j. Maintains adequate levels of reliability and customer service.
- 4            k. Promotes rate designs that yield peak load reduction or beneficial
- 5            load-shaping.

6            (3) When an electric public utility files with the Commission an application for a  
7            general rate case pursuant to G.S. 62-133 and that application includes a PBR  
8            application, the Commission shall institute proceedings on the application as  
9            provided in this subdivision. The electric public utility shall not make any  
10           changes in any rate or implement a PBR except upon 30 days' notice to the  
11           Commission, and the Commission may require the electric public utility to  
12           provide notice of the pending PBR application to the same extent as provided  
13           in G.S. 62-134(a) and may suspend the effect of the proposed base rates and  
14           PBR implementation pending investigation in the same manner as provided  
15           in G.S. 62-134(b); provided that, the Commission may suspend the  
16           implementation of the proposed base rates for no longer than 300 days. The  
17           electric public utility's application shall plainly state the changes in base rates  
18           and the time when the change in rates will go into effect and shall include  
19           schedules in the same manner required pursuant to G.S. 62-134(a). The  
20           Commission shall, upon reasonable notice, conduct a hearing concerning the  
21           lawfulness of the proposed base rates and the PBR application. After hearing,  
22           the Commission shall issue an order approving or rejecting the electric public  
23           utility's PBR application. The Commission shall not be permitted to modify  
24           the PBR application. In the event that the Commission rejects a PBR  
25           application, the Commission shall nevertheless establish the electric public  
26           utility's base rates in accordance with G.S. 62- 133 based on the PBR  
27           application. If the Commission rejects the PBR application, it shall provide an  
28           explanation of the deficiency and an opportunity for the electric public utility  
29           to refile, or for the electric public utility and the stakeholders to collaborate to  
30           cure the identified deficiency and refile.

31           (e) Commission review. – At any time prior to expiration of a PBR plan period, the  
32           Commission, with good cause and upon its own motion or petition by the Public Staff, may  
33           examine the reasonableness of an electric public utility's rates under a plan, conduct periodic  
34           reviews with opportunities for public hearings and comments from interested parties, and initiate  
35           a proceeding to adjust base rates or PIMs as necessary. In addition, the approval of a PBR shall  
36           not be construed to limit the Commission's authority to grant additional deferrals between rate  
37           cases for extraordinary costs not otherwise recognized in rates.

38           (f) Plan Period. – Any PBR application approved pursuant to this section shall remain in  
39           effect for a plan period of not more than 36 months.

40           (g) Commission authority preserved. – Nothing in this section shall be construed to (i)  
41           limit or abrogate the existing rate-making authority of the Commission or (ii) invalidate or void  
42           any rates approved by the Commission prior to the effective date of this section. In all respects,  
43           the alternative ratemaking mechanisms, designs, plans or settlements shall operate  
44           independently, and be considered separately, from riders or other cost recovery mechanisms  
45           otherwise allowed by law, unless otherwise incorporated into such plan.

46           (h) Utility Reporting. – For purposes of measuring an electric public utility's earnings  
47           under a PBR application approved under this section, an electric public utility shall make an  
48           annual filing that sets forth the electric public utility's earned return on equity, the electric public  
49           utility's revenue requirement trued-up with the actual electric public utility revenue, the amount  
50           of revenue adjustment in terms of customer refund or surcharge, if applicable, and the  
51           adjustments reflecting rewards or penalties provided for in PIMs approved by the Commission.

1       (i) Commission Report. – No later than April 1 of each year, the Commission shall  
2 submit a report on the activities taken by the Commission to implement, and by electric public  
3 utilities to comply with, the requirements of this section to the Governor, the Environmental  
4 Review Commission, the Joint Legislative Commission on Energy Policy, the Joint Legislative  
5 Oversight Committee on Agriculture and Natural and Economic Resources, the chairs of the  
6 Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the chairs  
7 of the House of Representatives Appropriations Committee on Agriculture and Natural and  
8 Economic Resources, and the chairs of the House Committee on Energy and Public Utilities. The  
9 report shall include a summary of public comments received by the Commission. In developing  
10 the report, the Commission shall consult with the Department of Environmental Quality.

11       (j) Rulemaking. – The Commission shall adopt rules to implement the requirements of  
12 this section. Rules adopted shall include all of the following matters:

13           (1) The specific procedures and requirements that an electric public utility shall  
14 meet when requesting approval of a PBR application.

15           (2) The criteria for evaluating a PBR application.

16           (3) The parameters for a technical conference process to be conducted by the  
17 Commission prior to submission of any PBR application consisting of one or  
18 more public meetings at which the electric public utility presents information  
19 regarding projected transmission and distribution expenditures and interested  
20 parties are permitted to provide comment and feedback; provided, however,  
21 no cross-examination of parties shall be permitted. The technical conference  
22 process to be established shall not exceed a duration of 60 days from the date  
23 on which the electric public utility requests initiation of such process.

24           (4) In the event the Commission rejects a PBR application, the process by which  
25 an electric public utility may address the Commission's reasons for rejection  
26 of a PBR application, which process may include collaboration between  
27 stakeholders and the electric public utility to cure any identified deficiency in  
28 an electric public utility's PBR application."

29       **SECTION 4.(b)** The Commission shall adopt rules as required by G.S. 62-133.16  
30 (j), as enacted by subsection (a) of this section, no later than 120 days after the date this section  
31 becomes law.

32       **SECTION 4.(c)** This section is effective when it becomes law and applies to any  
33 ratemaking mechanisms filed by an electric public utility on or after the date that rules adopted  
34 pursuant to G.S. 62-133.16, as enacted by subsection (a) of this section, become effective.  
35  
36  
37

### 38 **PART III. CUSTOMER RENEWABLES PROGRAMS**

#### 39 **GREEN SOURCE ADVANTAGE**

40  
41  
42       **SECTION 5.** G.S. 62-159.2 reads as rewritten:

43       "**§ 62-159.2. Direct renewable energy procurement for major military installations, public**  
44 **universities, and large customers.**

45       (a) Each electric public utility providing retail electric service to more than 150,000  
46 North Carolina retail jurisdictional customers as of January 1, 2017, shall file with the  
47 Commission an application requesting approval of a new program applicable to major military  
48 installations, as that term is defined in G.S. 143-215.115(1), The University of North Carolina,  
49 as established in Article 1 of Chapter 116 of the General Statutes, and other new and existing  
50 nonresidential customers with either a contract demand (i) equal to or greater than one megawatt

1 (MW) or (ii) at multiple service locations that, in aggregate, is equal to or greater than five  
2 megawatts (MW).

3 (b) Each electric public utility's program application required by this section shall provide  
4 standard contract terms and conditions for participating customers and for renewable energy  
5 suppliers from which the electric public utility procures energy and capacity on behalf of the  
6 participating customer. The application program shall allow eligible customers to select the new  
7 renewable energy facility from which the electric public utility shall procure energy and capacity.  
8 The standard terms and conditions available to renewable energy suppliers shall provide a range  
9 of terms, between two years and 20 years, from which the participating customer may elect.  
10 Eligible customers shall be allowed to negotiate with renewable energy suppliers regarding price  
11 terms.

12 (c) ~~Each contracted amount of capacity shall be limited to no more than one hundred~~  
13 ~~twenty five percent (125%) of the maximum annual peak demand of the eligible customer~~  
14 ~~premises. All agreements executed under this program prior to January 1, 2021 shall remain in~~  
15 ~~full force and effect and shall not be deemed modified or altered in any respect.~~

16 (c1) In the case of any participating customer that has not entered into an agreement under  
17 this program on or before January 1, 2021, all of the following shall apply:

- 18 (1) The reasonably projected first year annual energy output of any renewable  
19 energy facility or facilities selected by or procured on behalf of a participating  
20 customer shall not exceed the average annual energy consumption of the  
21 eligible customer premises for the most recent three calendar years, or, in the  
22 case of premises not in operation for three years, the reasonably projected  
23 average annual energy consumption for the first three years of operation.  
24 Participating customers' premises shall be located in the State of North  
25 Carolina and in the retail service territory of the offering utility, and  
26 participating customers may only participate in the program offered by the  
27 electric public utility that provides such customer with retail service.
- 28 (2) No single generating facility selected by or procured on behalf of a  
29 participating customer shall exceed 80 megawatts alternating current (MW  
30 AC) in capacity.
- 31 (3) The electric public utility, the participating customer, and the owner of any  
32 renewable energy facility or facilities selected by or procured on behalf of a  
33 participating customer shall enter into an agreement providing that all  
34 environmental and renewable energy attributes generated by such facilities  
35 shall be transferred to the participating customer for retirement or retired on  
36 the customer's behalf.

37 (c2) Each public utility shall establish reasonable credit requirements for financial  
38 assurance for renewable energy suppliers and eligible customers that are consistent with the  
39 Uniform Commercial Code of North Carolina. Major military installations and The University  
40 of North Carolina are exempt from the financial assurance requirements of this section.

41 (d) The program shall be offered by the electric public utilities subject to this section for  
42 a period of five years or until December 31, 2022, whichever is later, and shall not exceed a  
43 combined 600 megawatts alternating current (MW)(MW AC) of total capacity. For the public  
44 utilities subject to this section, where a major military installation is located within its  
45 Commission-assigned service territory, at least 100 megawatts (MW) of new renewable energy  
46 facility capacity offered under the program shall be reserved for participation by major military  
47 installations. At least 250 megawatts alternating current (MW)(MW AC) of new renewable  
48 energy facility capacity offered under the programs shall also be reserved for participation by  
49 The University of North Carolina. Major military installations and The University of North  
50 Carolina must fully subscribe to all their allocations prior to December 31, 2020, ~~or a period of~~  
51 ~~no more than three years after approval of the program, whichever is later.~~2022. If any portion

1 of total capacity set aside to major military installations or The University of North Carolina is  
2 not used, it shall be reallocated for use by any eligible program participant. If any portion of the  
3 600 megawatts alternating current (MW)(MW AC) of renewable energy capacity provided for in  
4 this section is not awarded prior to the expiration of the program, it shall be reallocated to and  
5 included in a competitive procurement in accordance with G.S. 62-110.8(a).

6 (e) In addition to the participating customer's normal retail bill, the total cost of any  
7 renewable energy and capacity procured by or provided by the electric public utility for the  
8 benefit of the program customer shall be paid by that customer. The electric public utility shall  
9 pay the owner of the renewable energy facility which provided the electricity. ~~The program~~  
10 ~~customer shall receive a bill credit for the energy as determined by the Commission; provided,~~  
11 ~~however, that the bill credit shall not exceed utility's avoided cost. The Commission shall ensure~~  
12 ~~that all other customers are held neutral, neither advantaged nor disadvantaged, from the impact~~  
13 ~~of the renewable electricity procured on behalf of the program customer. In the case of any~~  
14 ~~customer that enters into an agreement under this program after the effective date of this section,~~  
15 the customer shall be entitled to select one of the following bill credit options:

16 (1) A bill credit equal to the hourly real time avoided cost or day ahead avoided  
17 cost.

18 (2) A bill credit equal to avoided cost as determined in a manner consistent with  
19 the most recent Commission-approved methodology for a period of two, five  
20 or ten years, as selected by the customer.

21 (f) Major military installations and The University of North Carolina shall be entitled to  
22 participate in the program as described in subsections (b) through (e) of this section, or in  
23 accordance with the following terms and conditions:

24 (1) On or before December 31, 2021, the University of North Carolina may  
25 provide written notice to the electric public utility of its intent to participate in  
26 the program and its desired capacity amount, not to exceed 250 megawatts  
27 alternating current (MW AC) of renewable energy capacity, and major  
28 military installations may provide written notice to the electric public utility  
29 of their intent to participate in the program and their desired capacity amount,  
30 not to exceed 100 megawatts alternating current (MW AC) of renewable  
31 energy capacity.

32 (2) Upon receipt of written notice provided in accordance with subdivision (1) of  
33 this subsection, the electric public utility shall competitively procure from  
34 independent third parties renewable energy and capacity from one or more  
35 renewable energy facilities to provide the total amount of renewable energy  
36 capacity requested by The University of North Carolina and major military  
37 installations utilizing the competitive procurement process set forth in  
38 G.S. 62-110.8 for procurements occurring on or after January 1, 2022. The  
39 electric public utility shall enter into a power purchase agreement with one or  
40 more renewable facilities selected through such competitive procurement;  
41 provided that the price to be paid under the power purchase agreement,  
42 inclusive of network upgrades, shall not exceed the electric public utility's  
43 avoided cost as determined in a manner consistent with the most recent  
44 Commission-approved methodology for a period of 20 years. The applicable  
45 power purchase agreement shall allow the procuring electric public utility  
46 rights to dispatch, operate, and control the renewable energy facilities in the  
47 same manner as the electric public utility's own generating resource. Where  
48 necessary, the electric public utility may allocate a renewable energy facility  
49 between the major military installations and The University of North Carolina.  
50 In the event that an insufficient amount of qualifying bids are received in the  
51 initial procurement event or the electric public utility is otherwise unable to

1 procure the requested amount of capacity, the electric public utility may  
 2 conduct subsequent procurements at a reasonably determined time to attempt  
 3 to procure the full amount of requested capacity.

4 (3) In addition to their normal retail bill, the major military installations and The  
 5 University of North Carolina shall pay a product charge equal to the price  
 6 established through the competitive procurement for the renewable energy  
 7 facility or facilities procured for them, respectively. The electric public utility  
 8 shall pay the owner of the renewable energy facility or facilities selected  
 9 through such competitive procurement at the price established through the  
 10 competitive procurement. The major military installations and The University  
 11 of North Carolina shall be entitled to a bill credit equal to the price established  
 12 through the competitive procurement for the renewable energy facility or  
 13 facilities procured for them, respectively.

14 (4) In the event that the electric public utility is prohibited, for purposes of  
 15 compliance with a future federal or State law, rule, or regulation relating to air  
 16 emissions or renewable energy or clean energy, from relying on or otherwise  
 17 receiving credit for any renewable generating facility procured under this  
 18 program for a major military installation or The University of North Carolina,  
 19 the electric public utility shall be entitled after the first two years of the  
 20 contract term to terminate the agreement with the participating customer on  
 21 90 days' written notice to the participating customer if the Commission  
 22 determines that the offering utility will incur incremental compliance costs  
 23 due to its inability to rely on or otherwise receive credit for such renewable  
 24 generation resource or the output of such renewable generation resource. In  
 25 the event of any such termination, to the greatest extent reasonably possible  
 26 and subject to Commission approval, the utility shall seek to enter into a  
 27 replacement arrangement with such customer that provides the customer with  
 28 a set of rights that is as close as possible to the initial arrangement while still  
 29 allowing the utility to comply with the federal or State law, rule, or regulation  
 30 related to air emissions or renewable energy or clean energy generation."

## 31 SHARED SOLAR/COMMUNITY SOLAR GARDENS

32 **SECTION 6.(a)** G.S. 62-126.3 reads as rewritten:

### 33 "§ 62-126.3. Definitions.

34 For purposes of this Article, the following definitions apply:

- 35 (1) Affiliate. – Any entity directly or indirectly controlling or controlled by or  
 36 under direct or indirect common control with an electric power supplier.  
 37 (2) Commission. – The North Carolina Utilities Commission.  
 38 (3) ~~Community solar energy facility. — A solar energy facility whose output is~~  
 39 ~~shared through subscriptions.~~  
 40 (4) Customer generator. – An owner, operator, customer-generator lessee of a  
 41 solar energy facility or other renewable energy facility, including any  
 42 equipment that enhances the use of that facility such as an energy storage  
 43 device, provided that the storage device is charged solely from that facility,  
 44 that is taking service under the terms and conditions of a net metering tariff  
 45 approved by the Commission, including a tariff authorized under  
 46 G.S. 62-126.4A.  
 47 (4a) Customer generator lessee. – A lessee of a solar energy facility.  
 48 (5) Electric generator lessor. – The owner of solar energy facility that leases the  
 49 facility to a customer generator lessee, including any agents who act on behalf  
 50

of the electric generator lessor. For purposes of this Article, an electric generator lessor shall not be considered a public utility under G.S. 62-3(23).

(6) Electric power supplier. – A public utility, an electric membership corporation, or a municipality that sells electric power to retail electric customers in the State.

(7) Electric public utility. – A public utility as defined by G.S. 62-3(23) that sells electric power to retail electric customers in the State.

(7a) Government customer. – A governmental customer that receives retail electric service from an electric public utility.

(7b) Large commercial or industrial customer. – A commercial or industrial retail customer of an electric public utility whose annual peak demand is more than five megawatts.

...  
 (9) Net metering. – To use electrical metering equipment to measure the difference between the electrical energy supplied to a retail electric customer by an electric power supplier and the electrical energy supplied by the retail electric customer to the electric power supplier over the applicable billing period. A solar choice tariff authorized under G.S. 62-126.4A shall prospectively constitute an electric public utility's net metering arrangement for new customer participation after its effective date.

(10) Offering utility. – Except as specifically defined in G.S. 62-126.4A and 62-126.8A, an offering utility is any~~any~~ electric public utility as defined in G.S. 62-3(23) serving at least 150,000 North Carolina retail jurisdictional customers as of January 1, 2017-2021. The term shall not include any other electric public utility, electric membership corporation, or municipal electric supplier authorized to provide retail electric service within the State. An offering utility's participation in this Article as an electric generator lessor shall not otherwise alter its status as a public utility with respect to any other provision of this Chapter. An offering utility's participation in this Article shall be regulated pursuant to the provisions of this Article.

....  
 (13a) Small commercial or industrial customer. – A commercial or industrial retail customer of an electric public utility whose annual peak demand is less than or equal to five megawatts but excluding government customers.

...."

**SECTION 6.(b)** Article 6B of Chapter 62 of the General Statutes is amended by adding a new section to read:

**§ G.S. 62-126.8B. Shared solar program.**

(a) It is the policy of the State to encourage electric public utilities to provide expanded renewable energy options for North Carolina large commercial or industrial customers, small commercial or industrial customers, units of local government, and residential customers and to foster the use of renewable energy as part of the electric public utilities' generation mix. Therefore, electric public utilities providing retail electric service to more than 150,000 North Carolina retail jurisdictional customers as of January 1, 2021 shall jointly or separately, complete a competitive procurement seeking new solar resources in a total amount of approximately 750 megawatts alternating current (MW AC) procured over a period of approximately three years. All the following shall apply to such procurements:

(1) The offering utilities shall enter into power purchase agreements (PPA) with the selected solar generating facilities. PPAs shall be for a period of twenty years and shall provide for the purchase of all the energy, capacity, and all

1 environmental and renewable energy attributes. The applicable PPA shall  
2 allow the procuring electric public utility rights to dispatch, operate, and  
3 control the renewable energy facilities in the same manner as the electric  
4 public utility's own generating resources.

5 (2) The offering utilities may require the renewable generation facilities procured  
6 hereunder to meet commercially reasonable performance standards. The  
7 offering utilities and their affiliates shall not participate as bidders in the  
8 competitive solicitation process required under this section.

9 (3) Renewable generation facilities procured pursuant to this subsection shall be  
10 new solar generating facilities and located within the respective balancing  
11 authority areas of the electric public utilities, whether located inside or outside  
12 the geographic boundaries of the State. Each facility shall be connected to the  
13 electric public utility's transmission system and shall have a capacity of no  
14 more than 80 MW AC. The price paid under the PPA shall not exceed the  
15 electric public utility's current forecast of its avoided cost calculated over the  
16 term of the PPA, inclusive of any upgrade costs. The electric public utility's  
17 current forecast of its avoided cost shall be consistent with the  
18 Commission-approved avoided cost methodology.

19 (b) Each offering utility shall file with the Commission, an application requesting  
20 approval of a shared solar program. The Commission shall issue a final decision approving,  
21 modifying, or rejecting the program within 120 days of receipt of the application. Each shared  
22 solar program shall conform with all the following:

23 (1) Participating customers' premises shall be located in the State of North  
24 Carolina and in the retail service territory of the offering utility and  
25 participating customers may only participate in the program offered by the  
26 electric public utility that provides such customer with retail service.

27 (2) Capacity under the program shall be opened for a defined initial enrollment  
28 period during each program procurement cycle. If any program class is  
29 over-subscribed during the initial enrollment period, all the following shall  
30 apply:

31 (a) In the case of large commercial or industrial customers and  
32 government customers, the available capacity shall be allocated to all  
33 eligible customers that applied on a proportional basis based on the  
34 requested subscription amount of each customer.

35 (b) In the case of small commercial or industrial and residential customers,  
36 the available capacity shall be allocated through a random selection  
37 process.

38 (3) The total program volume shall be allocated as follows: 70% to large  
39 commercial or industrial customers and small commercial or industrial  
40 customers, 20% to government customers, and 10% to residential customers.  
41 To the extent that any customer class has not fully subscribed to its respective  
42 allocation within the initial enrollment period, any unsubscribed amount shall  
43 be made available to all eligible customers through a second enrollment period  
44 and, if oversubscribed during such second enrollment period, shall be  
45 allocated through a random selection process. Thereafter, any remaining  
46 capacity from such procurement cycle shall be made available on a first come,  
47 first served basis.

48 (4) The reasonably projected first year's annual energy output from a participating  
49 customer's capacity allocation from the program shall not exceed the average  
50 annual energy consumption of the eligible customer premises for the most  
51 recent three calendar years, or, in the case of premises not in operation for

1 three years, the reasonably projected average annual energy consumption for  
2 the first three years of operation.

3 (5) Once a subscription has been awarded, the subscription shall remain in place  
4 until the earlier of the following:

5 a. The customer terminates their subscription.

6 b. The customer cancels their retail service.

7 c. Twenty years after the solar generating facility to which such customer  
8 has been subscribed achieved commercial operation.

9 (6) Each participating customer shall pay a product charge equal to the average  
10 contract price for all facilities with which the offering utility has contracted in  
11 a particular procurement cycle pursuant to the applicable competitive  
12 solicitation.

13 (7) Each participating customer shall receive a bill credit equal to the product  
14 charge for such customer.

15 (8) All environmental and renewable energy attributes produced by any shared  
16 renewables facility associated with the customer's participation in the program  
17 shall be retired by the offering utility on behalf of the participating customer  
18 or, at the election of a non-residential participating customer, be conveyed to  
19 the customer for retirement, at the customer's expense, in which case, the  
20 customer must provide proof of retirement within 90 days. In the event that  
21 the utility is prohibited, for purposes of compliance with a future federal or  
22 State law or regulation relating to air emissions or renewable energy or clean  
23 energy, from relying on or otherwise receiving credit for a renewable  
24 generating facility that is procured under this program, the utility shall be  
25 entitled after the first two years of the program term to terminate the  
26 agreement with such participating customer on 90 days written notice to the  
27 participating customer if the Commission determines that the utility will incur  
28 incremental compliance costs due to its inability to rely on or otherwise  
29 receive credit for such renewable generation resource or the output of such  
30 renewable generation resource. In the event of any such termination, to the  
31 greatest extent reasonably possible and subject to Commission approval, the  
32 utility shall seek Commission approval of a replacement arrangement with  
33 such customer that provides the customer with a set of rights that is as close  
34 as possible to the initial arrangement while still allowing the utility to comply  
35 with such federal or State law or regulation related to air emissions or  
36 renewable energy or clean energy generation.

37 (9) Each participating customer shall pay a reasonable administration fee  
38 approved by the Commission in order for the offering utility to recover the  
39 administrative costs of the program."

40 **SECTION 6.(c)** G.S. 62-126.8 is repealed.

41 **SECTION 6.(d)** Article 6B of Chapter 62 of the General Statutes is amended by  
42 adding a new section to read:

43 **"§ G.S. 62-126.8A. Community solar gardens**

44 (a) Procurement. – In order to provide expanded solar energy options for North Carolina  
45 small commercial and industrial customers and residential customers and to foster the use of solar  
46 energy as part of the electric public utilities' generation mix, electric public utilities subject to  
47 this section shall undertake a competitive procurement of solar energy for the purpose of offering  
48 a community solar gardens program for participation by small commercial and industrial,  
49 government, and residential customers. For purposes of this section, an "offering utility" includes  
50 any electric public utility serving more than 100,000 retail electric customers in the State as of  
51 January 1, 2021. Aggregate procurement shall be as follows:

1           (1) Electric public utilities providing retail electric service to more than 150,000  
2 North Carolina retail jurisdictional customers as of January 1, 2021 shall  
3 jointly or separately complete a competitive procurement seeking up to 50  
4 megawatts (MW) of new distribution-connected solar generation to be  
5 utility-owned. To the extent practicable, approximately equal amounts of solar  
6 generation shall be procured under this program in each of their respective  
7 service territories.

8           (2) An electric public utility providing retail electric service to more than 100,000  
9 and fewer than 150,000 North Carolina retail jurisdictional customers as of  
10 January 1, 2021 may elect to offer a competitive procurement seeking up to  
11 10 megawatts (MW) of new distribution-connected solar generation to be  
12 utility-owned. For purposes of this section, such electric utility shall also be  
13 an "offering utility."

14       (b) The initial procurements required by this section shall be completed within 60 days  
15 of the date on which the Commission approves the program pursuant to subsection (c) of this  
16 section. Each offering utility implementing this section shall attempt to procure at least  
17 twenty-five percent (25%) of its total procurement amount from projects that are capable of being  
18 placed into service on or before December 31, 2023 for the purpose of offering a community  
19 solar gardens program for participation by its small commercial and industrial, government, and  
20 residential customers. Each offering utility shall be permitted to require that solar generation  
21 facilities procured under this section meet commercially reasonable performance and technical  
22 standards. An offering utility and its affiliates shall not participate as bidders in the competitive  
23 request for proposals process required under this section. In the event that an insufficient number  
24 of eligible solar generating facilities are procured through such process, an offering utility shall  
25 be permitted to propose self-developed solar generating facilities if the capital costs are below  
26 the cost cap specified in subsection (e) of this section. To the extent that an offering utility is  
27 unable to procure viable projects meeting the required criteria and meeting the total procurement  
28 amount specified in subdivisions (1) and (2) of subsection (a) of this section through the initial  
29 procurement, and there are no self-developed facilities meeting the criteria identified in this  
30 section, the offering utility shall be permitted to conduct another procurement at a later date to  
31 meet the total procurement amount.

32       (c) Eligible projects. – Solar generation facilities procured pursuant to subsection (a) of  
33 this section shall be new solar capacity and located in the State of North Carolina. Each such  
34 facility shall be interconnected to the relevant offering utility's distribution system.

35       (d) Application. – Within 180 days of the effective date of this section, each offering  
36 utility shall file with the Commission an application requesting approval of a community solar  
37 gardens program. Each community solar gardens program shall conform with the following:

38           (1) The program volume shall be allocated as follows: thirty-five percent (35%)  
39 to small commercial and industrial customers, thirty percent (30%) to  
40 government customers, and thirty-five percent (35%) to residential customers.  
41 To the extent that any customer class has not fully subscribed to its respective  
42 allocation within one year of the opening of the application period, any  
43 unsubscribed amount shall be made available to all program applicants based  
44 on the priority of their applications, or, to the extent necessary, by random  
45 selection process.

46           (2) The reasonably projected first year's annual energy output from a participating  
47 customer's capacity allocation from the program shall not exceed the average  
48 annual energy consumption of the eligible customer premises for the most  
49 recent three calendar years, or, in the case of premises not in operation for  
50 three years, the reasonably projected average annual energy consumption for  
51 the first three years of operation.

- 1           (3)    No single participating customer subscription shall account for more than fifty  
2           percent (50%) interest in a single facility, and each facility shall have a  
3           minimum of five subscribers.
- 4           (4)    Participating customers' premises shall be located in the State of North  
5           Carolina and in the retail service territory of the offering utility offering the  
6           program. Participating customers may only participate in the program offered  
7           by the electric public utility that provides such customer with retail service.
- 8           (5)    Once a subscription has been awarded, such subscription shall remain in place  
9           until the earlier of the following:
- 10           a.     The customer terminates their subscription.  
11           b.     The customer cancels their retail service.  
12           c.     Twenty years after the solar generating facility to which such customer  
13           has been subscribed achieved commercial operation.
- 14           (6)    Each participating customer shall pay a monthly product charge equal to its  
15           pro rata share of the offering utility's monthly levelized revenue requirement  
16           for all of the community solar garden facilities serving the relevant offering  
17           utility's community solar garden program.
- 18           (7)    Each participating customer shall pay a reasonable administration fee  
19           approved by the Commission in order for the offering utility to recover the  
20           administrative costs of the program.
- 21           (8)    Each offering utility shall provide to each participating customer a monthly  
22           bill credit in an amount equal to its pro rata share of the offering utility's  
23           monthly levelized revenue requirement for all of the community solar garden  
24           facilities. The renewable energy certificates produced by the community solar  
25           garden facility associated with the customer's subscription shall be retired by  
26           the offering utility on the customer's behalf; provided that government  
27           customers may elect to have certificates transferred by the electric public  
28           utilities to an account the customer controls but shall be responsible for the  
29           cost of such transfer and must provide proof of retirement of the certificates  
30           to the electric public utilities within 90 days of receipt, provided, further that  
31           in the event that the offering utility is prohibited, for purposes of compliance  
32           with a future federal or State law or regulation relating to air emissions or  
33           renewable energy or clean energy from relying on or otherwise receiving  
34           credit for any solar generating facility procured under the community solar  
35           gardens program, the offering utility shall be entitled after the first two years  
36           of the program to terminate such program on 90 days written notice to the  
37           participating customers if the Commission determines that the offering utility  
38           will incur incremental compliance costs due to its inability to rely on or  
39           otherwise receive credit for such renewable generation resource or the output  
40           of such renewable generation resource.
- 41           (e)    Cost recovery. – The capital cost for the construction of projects procured or  
42           constructed under this section shall not exceed one dollar and ninety cents (\$1.90) per watt AC,  
43           inclusive of interconnection costs. If a solar generating facility has been identified for selection  
44           and use in the program in accordance with the terms of this section, and satisfies the forgoing  
45           cost cap, such solar generating facility shall be deemed consistent with the public convenience  
46           and necessity for purposes of G.S. 62-110.1, and the Commission shall issue a certificate of  
47           public convenience and necessity for such replacement resources in accordance with the process  
48           set forth in G.S. 62-111.9(13)(a), and no further process shall be required under G.S. 62-110.1  
49           except as otherwise addressed therein. Each offering utility shall be permitted to establish a  
50           regulatory asset and defer to such regulatory asset the incremental costs of all solar generating  
51           facilities procured or built under this section until such time as the costs can be reflected in

1 customer rates. The types of incremental costs that may be deferred include operations and  
 2 maintenance expenses, administration costs, property tax, depreciation expense, income taxes,  
 3 and carrying costs related to electric plant investments and regulatory assets at the offering  
 4 utility's then authorized, net-of-tax, weighted average cost of capital.

5 (f) Bill credit adjustment. – If, at any point after the date that is two years from the date  
 6 on which the program is opened for subscriptions, less than fifty percent (50%) of the available  
 7 subscriptions have been claimed, any party may petition the Commission to modify a community  
 8 solar garden program as needed to enhance participation through adjustments to the participating  
 9 customer product charge and bill credit, and the Commission may so modify the program if the  
 10 Commission determines that it is in the public interest to do so."

11 **SECTION 6.(e)** This section is effective when it becomes law. The applications  
 12 required to be filed with the Utilities Commission pursuant to G.S. 62-126.8B(b), as enacted by  
 13 subsection (b) of this section, and G.S. 62-126.8A, as enacted by subsection (d) of this section,  
 14 shall be filed by the offering utilities no later than 180 days after the effective date of this section.

## 16 SOLAR CHOICE TARIFF

17  
 18 **SECTION 7.(a)** G.S. 62-2 reads as rewritten:

### 19 "§ 62-2. Declaration of policy.

20 (a) Upon investigation, it has been determined that the rates, services and operations of  
 21 public utilities as defined herein, are affected with the public interest and that the availability of  
 22 an adequate and reliable supply of electric power and natural gas to the people, economy and  
 23 government of North Carolina is a matter of public policy. It is hereby declared to be the policy  
 24 of the State of North Carolina:

25 ...

26 (4) To provide just and reasonable rates and charges for public utility services  
 27 without unjust discrimination, undue preferences or advantages, or unfair or  
 28 destructive competitive practices and consistent with long-term management  
 29 and ~~conservation~~ efficient use of energy resources by avoiding wasteful,  
 30 uneconomic and inefficient uses of energy;

31 (4a) To provide just and reasonable time-variant rates and other dynamic price  
 32 offerings to utility customers that are designed to optimize the total cost of  
 33 energy consumption rather than the total volume of energy consumed;

34 (4b) To assure that facilities necessary to meet future growth can be financed by  
 35 the utilities operating in this State on terms which are reasonable and fair to  
 36 both the customers and existing investors of such utilities; and to that end to  
 37 authorize fixing of rates in such a manner as to result in lower costs of new  
 38 facilities and lower rates over the operating lives of such new facilities by  
 39 making provisions in the rate-making process for the investment of public  
 40 utilities in plants under construction;

41 ...."

42 **SECTION 7.(b)** G.S. 126-2 reads as rewritten:

### 43 "§ 62-126.2. Declaration of policy.

44 The General Assembly of North Carolina finds that as a matter of public policy it is in the  
 45 interest of the State to encourage time-variant pricing structures to promote net energy metering  
 46 options, and to authorize the leasing of solar energy facilities for retail customers and subscription  
 47 to shared community solar energy facilities. The General Assembly further finds and declares  
 48 that in encouraging the time-variant pricing structures to promote net energy metering options  
 49 and the leasing of and subscription to solar energy facilities pursuant to this act,  
 50 cross-subsidization should be avoided to the greatest extent practicable when balancing the goals  
 51 of this act.~~by holding harmless electric public utilities' customers that do not participate in such~~

1 ~~arrangements.~~ The General Assembly recognizes that due to substantive differences in size,  
2 customer bases, access to low-carbon generation, and other factors, this declaration of policy  
3 does not apply to electric membership corporations, state-owned electric suppliers, or  
4 municipalities that sell electric power to retail customers in the State."

5 SECTION 7.(e) G.S. 62-126.5(d) reads as rewritten:

6 "**§ 62-126.5. Scope of leasing program in offering utilities' service areas.**

7 ...

8 (d) The total installed capacity of all solar energy facilities on an offering utility's system  
9 that are leased pursuant to this section shall not exceed ~~one percent (1%)~~ ten percent (10%) of  
10 the previous five-year average of the North Carolina retail contribution to the offering utility's  
11 coincident retail peak demand. The offering utility may refuse to interconnect customers that  
12 would result in this limitation being exceeded. Each offering utility shall establish a program for  
13 new installations of leased equipment to permit the reservation of capacity by customer generator  
14 lessees, whether participating in a public utility or nonutility lessor's leasing program, on its  
15 system, including provisions to prevent or discourage abuse of such programs. Such programs  
16 must provide that only prospective individual customer generator lessees may apply for, receive,  
17 and hold reservations to participate in the offering utility's leasing program. Each reservation  
18 shall be for a single customer premises only and may not be sold, exchanged, traded, or assigned  
19 except as part of the sale of the underlying premises.

20 ..."

21 SECTION 7.(d) Article 6B of Chapter 62 of the General Statutes is amended by  
22 adding a new section to read:

23 "**§ 62-126.4A. Solar choice tariff.**

24 (a) Each offering utility shall file for Commission approval a solar choice tariff that shall  
25 become the exclusive option available to customers that apply for net metering service after  
26 Commission approval pursuant to this section. For purposes of this section, an "offering utility"  
27 includes all electric public utilities serving more than 100,000 retail electric customer in the State  
28 as of January 1, 2021.

29 (b) To allow the market for customer-sited renewable energy facilities to continue to  
30 mature without disruption and in a sustainable manner for participating and non-participating  
31 customers, and the State economy as a whole, the Commission shall approve an offering utility's  
32 application to establish a solar choice tariff that meets all of the following objectives:

33 (1) Provides for monthly netting with net exports credited at  
34 Commission-approved avoided cost in light of the costs and benefits of the  
35 solar choice tariff achieving the objectives of a net metering program except  
36 as provided in subdivision (2) of this subsection.

37 (2) Provides for monthly netting within each pricing period for time-variant and  
38 dynamic pricing structures with net exports credited at Commission-approved  
39 avoided cost.

40 (3) Provides rate design options that align the customer generator's ability to  
41 achieve bill savings with long-term reductions in the overall cost the offering  
42 utility will incur in providing electric service, including, but not limited to,  
43 time-variant and dynamic pricing structures.

44 (4) Reduces cross-subsidization by non-participants through mechanisms that  
45 allow offering utilities the opportunity to recover customer costs and  
46 distribution costs, including a minimum monthly bill, grid access fee for  
47 oversized systems, and non-bypassable charges to recover storm recovery,  
48 cybersecurity, and public purpose charges for ratepayer funded programs like  
49 energy efficiency, demand side management, and resiliency. Such recovery  
50 mechanisms shall not, however, include a standby charge where billing is  
51 based on the capacity of the renewable energy system.

1           (5) Minimizes, to the greatest extent practicable, any intra-class  
2           cross-subsidization identified using the offering utility's most recently  
3           approved embedded cost of service study.

4           (6) Encourages customer adoption of other energy savings, demand reduction, or  
5           grid services technologies and participation in cost-effective programs that  
6           can be offered in conjunction with a solar choice tariff to help lower the cost  
7           of providing service and maximize grid benefits.

8           (c) Customer generators taking service under a pre-existing net metering tariff prior to  
9           Commission approval of a solar choice tariff pursuant to this section shall have the option to  
10           transition to the new solar choice tariff or continue to take service under the offering utility's  
11           pre-existing net metering tariff in effect at the time of interconnection of that customer generator's  
12           net metering facility until January 1, 2040. After January 1, 2027, a non-by-passable charge based  
13           upon the DC capacity of the facility will be added for customers who remain on a pre-existing  
14           net metering tariff. This charge shall be designed to collect the base rate increase approved by  
15           the Commission after January 1, 2027, that would otherwise not be collected from customer  
16           generators taking service under a pre-existing net metering tariff after January 1, 2027.

17           (d) Nothing in this section prohibits a customer generator that is participating in the  
18           offering utility's net metering tariff or solar choice tariff from also participating in a  
19           Commission-approved energy efficiency program, grid services program, or other type of  
20           distributed energy resource aggregation program.

21           (e) An offering utility offering a solar choice tariff approved pursuant to this section shall  
22           continue to be authorized to fully recover its cost of service, including but not limited to: (i) all  
23           costs to effectuate the solar choice tariff; and (ii) any unrecovered non-fuel and variable  
24           operations and maintenance costs due to customer generators' participation in the solar choice  
25           tariff. Notwithstanding the foregoing, customers participating in a retail demand electric tariff in  
26           effect on or before July 1, 2021, or a customer who elects to take service under such retail demand  
27           tariff, shall be exempt from cost recovery authorized by this subsection."

28           **SECTION 7.(e) G.S. 62-126.5(d) reads as rewritten:**

29           **"§ 62-126.5. Scope of leasing program in offering utilities' service areas.**

30           ...

31           (d) The total installed capacity of all solar energy facilities on an offering utility's system  
32           that are leased pursuant to this section shall not exceed ~~one percent (1%)~~ five percent (5%) of the  
33           previous five-year average of the North Carolina retail contribution to the offering utility's  
34           coincident retail peak demand. The offering utility may refuse to interconnect customers that  
35           would result in this limitation being exceeded. Each offering utility shall establish a program for  
36           new installations of leased equipment to permit the reservation of capacity by customer generator  
37           lessees, whether participating in a public utility or nonutility lessor's leasing program, on its  
38           system, including provisions to prevent or discourage abuse of such programs. Such programs  
39           must provide that only prospective individual customer generator lessees may apply for, receive,  
40           and hold reservations to participate in the offering utility's leasing program. Each reservation  
41           shall be for a single customer premises only and may not be sold, exchanged, traded, or assigned  
42           except as part of the sale of the underlying premises.

43           ..."

44           **SECTION 7.(f) G.S. 62-133.8(a) reads as rewritten:**

45           "(a) Definitions. – As used in this section:

46           ...

47           (4) "Energy efficiency measure" means an equipment, physical, behavioral, or  
48           program change implemented by a retail electric customer after January 1,  
49           2007, that reduces the customer's energy requirements from the electric power  
50           supplier needed ~~results in less energy used~~ to perform the same function.  
51           "Energy efficiency measure" includes, but is not limited to, energy produced

1 from a combined heat and power system that uses nonrenewable energy  
2 ~~resources, resources, and energy produced by a customer generator as that term~~  
3 is defined under 62-126.3(4). "Energy efficiency measure" does not include  
4 demand-side ~~management, management, or the net monthly exports of energy~~  
5 by a customer under a tariff approved pursuant to G.S. 62-126.4(b).

6 ..."

7 **SECTION 7.(g)** Article 6B of Chapter 62 of the General Statutes is amended by adding  
8 a new section to read:

9 **"§ 62-126.4B. Standby service required in certain circumstances.**

10 For any customer participating in an offering utility's net metering tariff or solar choice tariff,  
11 standby service shall be required for customers installing solar or other behind-the-meter  
12 generation with a nameplate generation capacity over 100 kW. For behind-the-meter generation  
13 with a planning capacity factor of less than 60%, the offering utility shall calculate standby  
14 service cost using the customer's standby service demand for the billing month set based on either  
15 the nameplate capacity of the installed generation or, where the customer has additional metering  
16 equipment installed at the customer's expense, then the standby service demand shall equal the  
17 generator gross output that occurs at the billing interval coincident with the customer's maximum  
18 demand for the billing month under the participating customer's applicable rate schedule.  
19 Notwithstanding the foregoing, customers participating in a retail demand electric tariff in effect  
20 on or before July 1, 2021, or a customer who elects to take service under such retail demand  
21 tariff, shall be exempt from the standby charge authorized by this section."

22 **SECTION 7.(h)** This section is effective when it becomes law. The solar choice tariff  
23 required to be filed with the Utilities Commission pursuant to G.S. 62-126.4A, as enacted by  
24 subsection (d) of this section, shall be filed by each offering utility no later than 120 days after  
25 the effective date of this section, and the Commission shall issue an order to approve, modify, or  
26 deny the program no later than 90 days after the submission of the program by the electric public  
27 utility.

28  
29  
30 **POTENTIAL MODIFICATION OF CERTAIN EXISTING POWER PURCHASE**  
31 **AGREEMENTS WITH SMALL POWER PRODUCERS**

32 **SECTION 8.(a)** In an effort to reduce cost to customers, within 120 days after the  
33 effective date of this section, the North Carolina Utilities Commission shall initiate a stakeholder  
34 process to provide interested parties the opportunity to establish the rates to be paid by the  
35 electric public utilities in connection with the modification of certain existing power purchase  
36 agreements of small power producers to present to the Commission that would accomplish both  
37 of the following:

- 38 (1) Provide small power producers a one-time option to elect, within 180 days of  
39 a Commission order authorizing such action, to amend their existing power  
40 purchase agreement, extending into a new longer term power purchase  
41 agreement for a term equal to the remaining term of the existing power  
42 purchase agreement plus an additional 10 years, notwithstanding the contract  
43 term limits prescribed in G.S. 62-156(c);
- 44 (2) Establish capacity and energy rates to be paid by the electric public utilities  
45 that are designed to take into consideration the currently contracted capacity  
46 and energy rates, capacity and energy rates to be computed at the time the  
47 small power producer elects to exercise the option to amend their existing  
48 power purchase agreement as provided for in subdivision (1) of this  
49 subsection. In developing these rates, stakeholders shall consider whether use  
50 of the developed rates, for purchases from small power producers for an

1 extended future term, are just and reasonable to the electric consumer of the  
2 electric utility, and in the public interest

3 **SECTION 8.(b)** For purposes of subsections (a) through (e) of this section, the term  
4 "small power producers" means small power producers, as that term is defined under  
5 G.S. 62-3(27a), generating solar electricity with a total capacity equal to or less than five  
6 megawatts (AC) that established a legally enforceable obligation in accordance with the  
7 Commission's then applicable requirements on or before November 15, 2016 and have entered  
8 into a long-term contract exceeding two years to sell their full output to the interconnected  
9 electric public utility under Section 210 of the Public Utility Regulatory Policies Act of 1978.

10 **SECTION 8.(c)** In conducting the stakeholder process required by this section, the  
11 Commission shall convene representatives from all of the following entities:

- 12 (1) The Public Staff.
- 13 (2) Electric public utilities obligated to purchase capacity and energy from small  
14 power producers pursuant to G.S. 62-156.
- 15 (3) Small power producers.

16 **SECTION 8.(d)** Within 180 days of the Commission's initiation of the stakeholder  
17 process, the stakeholders shall present, jointly or separately, their recommendations to the  
18 Commission. The Commission shall approve the proposed rates and resulting amended power  
19 purchase agreements if the Commission finds that the proposed methodology: (i) reduces costs  
20 to customers in the short term and over the life of the amended power purchase agreement,  
21 evaluated from the date of the amendment through to the end of the amended agreement; (ii)  
22 fairly compensates small power producers that elect such treatment; and (iii) is just and  
23 reasonable and in the public interest. Notwithstanding the foregoing, it is hereby declared  
24 appropriate, in the public interest and promoting of regulatory economy, for small power  
25 producers and the electric public utilities to negotiate amendments to the power purchase  
26 agreements of such small power producers in lieu of the aforementioned stakeholder process,  
27 provided that the intent and objectives of this Section are accomplished through such negotiation.

28 **SECTION 8.(e)** Notwithstanding the foregoing, it is hereby declared appropriate,  
29 in the public interest, and promoting of regulatory economy, for small power producers and the  
30 electric public utilities to negotiate amendments to the power purchase agreements of such small  
31 power producers in lieu of the aforementioned stakeholder process, provided that the intent and  
32 objectives of this section are accomplished through such negotiation.

#### 33 34 35 **PART IV. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

36 **SECTION 9.** If any provision of this act or the application thereof to any person or  
37 circumstances is held invalid, such invalidity shall not affect other provisions or applications of  
38 this act that can be given effect without the invalid provision or application, and, to this end, the  
39 provisions of this act are declared to be severable.

40 **SECTION 10.** Except as otherwise provided, this act is effective when it becomes  
41 law.